



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations to Support the Implementation of the New Zealand Business Number on the Ministry of Business, Innovation and Employment's Registers	Date to be published	9 September 2019

List of documents that have been proactively released

Date	Title	Author
23 July 2019	<i>Regulations to Support the Implementation of the New Zealand Business Number on the Ministry of Business, Innovation and Employment's Registers</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
23 July 2019	<i>LEG-19-MIN-0101 – Regulations to Support the Implementation of the New Zealand Business Number on the Ministry of Business, Innovation and Employment's Registers</i>	<i>Cabinet Office</i>

Information redacted

NO (please select)

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In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

Regulations to Support the Implementation of the New Zealand Business Number on the Ministry of Business, Innovation and Employment's Registers

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the:
 - 1.1 *Auditor Amendment Regulations 2019*;
 - 1.2 *Insolvency (Personal Insolvency) Amendment Regulations 2019*;
 - 1.3 *Motor Vehicle Sales Amendment Regulations 2019*;
 - 1.4 *Retirement Villages (General) Amendment Regulations 2019*;
 - 1.5 *Incorporated Societies Amendment Regulations 2019*;
 - 1.6 *Charitable Trusts Regulations 2019*;
 - 1.7 *Personal Property Securities Amendment Regulations 2019*;
 - 1.8 *Financial Service Providers (Registration) Amendment Regulations 2019*;
 - 1.9 *Financial Markets Conduct (New Zealand Business Numbers) Amendment Regulations 2019*; and
 - 1.10 *Auctioneers Amendment Regulations 2019*.
- 2 These regulations are being made to support the implementation of the New Zealand Business Number (NZBN) on registers administered by the Ministry of Business, Innovation and Employment (MBIE).

Background

- 3 The *New Zealand Business Number Act 2016* enables a unique identifier (an NZBN) to be assigned to all New Zealand businesses. The NZBN helps businesses better connect and interact with other businesses and government agencies, through a shared network of information.
- 4 In May 2016, whole-of-government directions were issued setting out the requirements on government agencies to implement NZBNs. The directions recognised that widespread use of NZBNs was critical for the benefits of the NZBN to be realised.
- 5 To this end, Cabinet has agreed to amend a number of sets of regulations:
 - 5.1 In August 2017, Cabinet agreed to amend eight sets of regulations to support the implementation of NZBN on some business entity registers, insolvency registers

and consumer protection occupational registers within the Commerce and Consumer Affairs portfolio [EGI-17-MIN-0206].

5.2 In June 2019, Cabinet agreed to amend the *Incorporated Societies Regulations 1979* and to make regulations under the *Charitable Trusts Act 1957* [DEV-19-MIN-0152].

6 However, only some of these decisions have been actioned:

6.1 In November 2017, Cabinet authorised the submission to the Executive Council of the *Auctioneers Amendment Regulations 2017*, the *Financial Markets Conduct Amendment Regulations (No 2) 2017*, and the *Financial Service Providers (Registration) Amendment Regulations 2017* [LEG-17-MIN-0147]. These amending regulations came into force on 31 December 2017.

6.2 In August 2018, Cabinet authorised the submission to the Executive Council of the *Personal Property Securities Amendment Regulations 2018* [LEG-18-MIN-0113]. These amending regulations came into force on 1 October 2018.

6.3 In November 2018, Cabinet authorised the submission to the Executive Council of the *Limited Partnerships Amendment Regulations 2018* [LEG-18-MIN-0173]. These amending regulations came into force on 7 December 2018.

7 The purpose of this paper is to fully action the 2017 and 2019 Cabinet decisions, by seeking authorisation to submit the outstanding amending regulations to the Executive Council.

Policy

Follow-up on Cabinet's 2017 decision

8 This paper seeks approval to submit to Executive Council the following four amendment regulations that remain outstanding from Cabinet's August 2017 decision. The amending regulations and changes agreed to by Cabinet are as follows:

8.1 *Auditors Amendment Regulations 2019*: include NZBNs on the Auditors Register and allow the Auditors Register to be searched by NZBNs [rec 4, EGI-17-MIN-0206].

8.2 *Insolvency (Personal Insolvency) Amendment Regulations 2019*: allow for the collection of NZBNs from individuals applying for a formal insolvency process, include NZBNs on the Insolvency Register and allow the Insolvency Register to be searched by NZBNs [rec 8, EGI-17-MIN-0206].

8.3 *Motor Vehicle Sales Amendment Regulations 2019*: allow for the collection of motor vehicle traders' NZBNs, include NZBNs on the Motor Vehicle Traders Register and allow the Motor Vehicle Traders Register to be searched by NZBNs [rec 10, EGI-17-MIN-0206].

8.4 *Retirement Villages (General) Amendment Regulations 2019*: allow for the collection of the NZBN of an operator of a retirement village [rec 11, EGI-17-MN-0206].

9 I also seek Cabinet policy approval to make some minor changes unrelated to NZBNs:

- 9.1 to include in the *Insolvency (Personal Insolvency) Amendment Regulations 2019* [paragraph 8.2 refers] an amendment that aligns the treatment of individuals who have gone through a 'no asset' procedure with the treatment of individuals who have gone through a bankruptcy procedure, by ensuring that information about both types of individual remains on the register for the same length of time; and
- 9.2 to include in the *Motor Vehicle Sales Amendment Regulations 2019* [paragraph 8.3 refers] the following minor amendments:
- 9.2.1 where an individual applies for registration as a motor vehicle trader, to require the application to include his or her email address; and
- 9.2.2 where a company applies for registration as a motor vehicle trader, to no longer require the application to include fax numbers.
- 10 Finally, although policy approval was given in the 2017 Cabinet decision for amending the *Financial Service Providers (Registration) Regulations 2010* to require the display of the NZBNs of corporate and non-corporate entities [EG-17-MIN-0206], the *Financial Service Providers (Registration) Amendment Regulations 2017* (referenced in paragraph 6.1) concerned corporate entities only. Further amendments need to be made to the *Financial Service Providers (Registration) Regulations 2010* to allow for the collection of the NZBNs of financial service providers that are not corporate entities, and for the inclusion of those NZBNs on the Financial Service Providers Register. I intend to return to Cabinet in the first half of next year with appropriate amending regulations.

Follow-up to Cabinet's 2019 decision

- 11 This paper seeks approval to submit to Executive Council the following two regulations that relate to Cabinet's June 2019 decision. The regulations and changes agreed to by Cabinet are as follows:
- 11.1 *Incorporated Societies Amendment Regulations 2019*: include NZBNs on the incorporated societies register [rec 3, DEV-19-MIN-0152].
- 11.2 *Charitable Trusts Regulations 2019*: set out the particulars that the register of charitable trust boards must include, by codifying the particulars currently included on the register and adding the NZBN [rec 4, DEV-19-MIN-0152].

Technical changes

- 12 I have identified a minor technical issue with the four sets of corporate governance regulations that were amended in November 2017 and August 2018 (paragraphs 6.1 and 6.2 above refer): the *Auctioneers Regulations 2014*, the *Financial Service Providers (Registration) Regulations 2010*; the *Financial Markets Conduct Regulations 2014*; and the *Personal Property Securities Regulations 2001*.
- 13 Specifically, these regulations currently define the NZBN as "the number allocated to an entity under section 14 of the New Zealand Business Number Act 2016". In fact, entities can be allocated numbers not only under section 14 but also under section 15.
- 14 This technical error in the original regulations was not detected until recently, and so was not corrected by the amending regulations of November 2017 and August 2018. In this

context, I am seeking Cabinet approval to submit to Executive Council four further amendment regulations:

- 14.1 *Auctioneers Amendment Regulations 2019*;
- 14.2 *Financial Markets Conduct (New Zealand Business Numbers) Amendment Regulations 2019*;
- 14.3 *Financial Service Providers (Registration) Amendment Regulations 2019*; and
- 14.4 *Personal Property Securities Amendment Regulations 2019*.

Timing and 28-day rule

15 Subject to Cabinet's agreement, the amendment regulations will be submitted to the Executive Council on 29 July 2019, be notified in the Gazette on 1 August 2019, and come into effect:

15.1 on 2 September 2019 for the:

- 15.1.1 *Motor Vehicle Sales Amendment Regulations 2019*;
- 15.1.2 *Personal Property Securities Amendment Regulations 2019*;
- 15.1.3 *Financial Service Providers (Registration) Amendment Regulations 2019*;
- 15.1.4 *Financial Markets Conduct (New Zealand Business Numbers) Amendment Regulations 2019*; and
- 15.1.5 *Auctioneers Amendment Regulations 2019*;

15.2 on 30 September 2019 for the:

- 15.2.1 *Incorporated Societies Amendments Regulations 2019*; and
- 15.2.2 *Charitable Trusts Regulations 2019*;

15.3 on 1 October 2019 for the:

- 15.3.1 *Auditor Amendment Regulations 2019*; and
- 15.3.2 *Retirement Villages (General) Amendment Regulations 2019*;

15.4 on 2 March 2020 for the *Insolvency (Personal Insolvency) Amendment Regulations 2019*.

16 No waiver of the 28-day rule is sought.

17 As the proposed changes are technical, businesses and users of the register do not need a longer lead-in period to become familiar with any changes.

Compliance

- 18 The regulations comply with:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*;
 - 18.3 the principles and guidelines set out in the *Privacy Act 1993*;
 - 18.4 relevant international standards and obligations; and
 - 18.5 the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 19 Section 549 of the *Financial Markets Conduct Act 2013* requires that the Minister of Commerce and Consumer Affairs consult with the Financial Markets Authority before making any regulations under Subpart 1 of Part 9 of that Act, which includes regulations prescribing procedures, requirements and other matters for any register kept under the Act. I confirm that this consultation requirement has been met.

Regulations Review Committee

- 20 There do not appear to be any grounds for the Regulations Review Committee to draw the amendment regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 21 The draft regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 22 The regulatory impact analysis requirements do not apply to the proposals in this paper as the proposed changes are minor and technical in nature.

Publicity

- 23 No publicity is planned on the proposals in this paper.

Proactive Release

- 24 I intend to proactively release this paper, in full, within 30 business days of Cabinet's decision.

Consultation

- 25 The Ministry of Housing and Urban Development, the Department of Internal Affairs, the Treasury, and the Department of the Prime Minister and Cabinet (PAG) were consulted on this paper.
- 26 The registrars responsible for the registers mentioned in each set of regulations – who sit within MBIE's Companies Office, Trading Standards team, and Insolvency and Trustee Service – were also consulted.

- 27 Public consultation on the amendments has not been considered necessary due to the minor and technical nature of the changes.
- 28 Finally, as agreed by Cabinet in June 2019 [DEV-19-MIN-015], during the drafting of the *Charitable Trust Regulations 2019*, I consulted with the Minister of Justice on the particulars to be included in the register of charitable trust boards.

Recommendations

I recommend that the Cabinet Legislation Committee:

Cabinet's 2017 decision

- 1 **note** that on 2 August 2017, the Cabinet Economic Growth and Infrastructure Committee agreed to amend eight sets of regulations to allow for the collection of NZBNs, allow NZBNs to be included on the relevant register and allow users to search the register by NZBN [EGI-17-MIN-0206];
- 2 **note** that this paper seeks authorisation of four sets of regulations that give effect to the relevant decisions referred to in recommendation 1 above, namely the *Auditors Amendment Regulations 2019*, the *Insolvency (Personal Insolvency) Amendment Regulations 2019*, the *Motor Vehicle Sales Amendment Regulations 2019*, and the *Retirement Villages (General) Amendment Regulations 2019*;
- 3 **agree** that the *Insolvency (Personal Insolvency) Amendment Regulations 2019* should also ensure that information about individuals who have gone through a 'no asset' procedure and information about individuals who have gone through a bankruptcy procedure remains on the register for the same length of time;
- 4 **agree** that the *Motor Vehicle Sales Amendment Regulations 2019* should also ensure that:
- 4.1 where an individual applies for registration as a motor vehicle trader, to require the application to include his or her email address; and
- 4.2 where a company applies for registration as a motor vehicle trader, to no longer require the application to include fax numbers.

Cabinet's 2019 decision

- 5 **note** that in June 2019, Cabinet agreed to amend the *Incorporated Societies Regulations 1979* and to make regulations under the *Charitable Trusts Act 1957*, notably to allow NZBNs to be included on the relevant register and allow users to search the register by NZBN [DEV-19-MIN-0152];
- 6 **note** that this paper seeks authorisation of two sets of regulations that give effect to the relevant decisions referred to in recommendation 5 above, namely the *Incorporated Societies Amendment Regulations 2019* and the *Charitable Trusts Regulations 2019*;

Minor technical changes

- 7 **note** that there is a minor technical issue with four other sets of corporate governance regulations that were amended in 2017 and 2018, concerning the definition of NZBN;

- 8 **note** that this paper seeks authorisation to submit relevant amending regulations to the Executive Council, namely the *Auctioneers Amendment Regulations 2019*, the *Financial Service Providers (Registration) Amendment Regulations 2019*; the *Financial Markets Conduct (New Zealand Business Numbers) Regulations 2019*; and the *Personal Property Securities Amendment Regulations 2019*;
- 9 **note**, in respect of one of the amending regulations referred to in recommendation 8, that section 549 of the *Financial Markets Conduct Act 2013* requires the Minister of Commerce and Consumer Affairs to consult with the Financial Markets Authority before making any regulations under Subpart 1 of Part 9 of that Act, which includes regulations prescribing procedures, requirements and other matters for any register kept under the Act;
- 10 **note** the advice of the Minister for Commerce and Consumer Affairs that this requirement has been met;

Regulations for submission

- 11 **authorise** the submission to the Executive Council of the:
- 11.1 *Auditor Amendment Regulations 2019*;
 - 11.2 *Insolvency (Personal Insolvency) Amendment Regulations 2019*;
 - 11.3 *Motor Vehicle Sales Amendment Regulations 2019*;
 - 11.4 *Retirement Villages (General) Amendment Regulations 2019*;
 - 11.5 *Incorporated Societies Amendment Regulations 2019*;
 - 11.6 *Charitable Trusts Regulations 2019*;
 - 11.7 *Personal Property Securities Amendment Regulations 2019*;
 - 11.8 *Financial Service Providers (Registration) Amendment Regulations 2019*;
 - 11.9 *Financial Markets Conduct (New Zealand Business Numbers) Amendment Regulations 2019*; and
 - 11.10 *Auctioneers Amendment Regulations 2019*.
- 12 **note** that the amendment regulations referred to in recommendation 11 above come into force:
- 12.1 on 2 September 2019 for the:
 - 12.1.1 *Motor Vehicle Sales Amendment Regulations 2019*;
 - 12.1.2 *Personal Property Securities Amendment Regulations 2019*;
 - 12.1.3 *Financial Service Providers (Registration) Amendment Regulations 2019*;
 - 12.1.4 *Financial Markets Conduct Amendment Regulations 2019*; and

- 12.1.5 *Auctioneers Amendment Regulations 2019;*
- 12.2 on 30 September 2019 for the:
 - 12.2.1 *Incorporated Societies Amendment Regulations 2019;* and
 - 12.2.2 *Charitable Trusts Regulations 2019;*
- 12.3 on 1 October 2019 for the:
 - 12.3.1 *Auditor Amendment Regulations 2019;* and
 - 12.3.2 *Retirement Villages (General) Amendment Regulations 2019;*
- 12.4 on 2 March 2020 for the *Insolvency (Personal Insolvency) Amendment Regulations 2019.*

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

PROACTIVELY RELEASED