

In Confidence

Office of the Minister for Small Business

Chair, Cabinet Economic Development Committee

## **New Zealand Business Number: Policy Approval for Primary Business Data Changes**

### **Proposal**

- 1 This paper informs Cabinet of my intention to recommend that the Governor-General issue an Order in Council to amend the New Zealand Business Number Act 2016 (the Act). The proposed amendments clarify some of the information held on the New Zealand Business Number (NZBN) Register, add some new information, and make more information publicly available.

### **Executive Summary**

- 2 The Act established the NZBN as a globally unique identifier, available to all entities in business in New Zealand. The NZBN and core business information are held on the NZBN Register. The core business information is referred to in the Act as 'primary business data' (PBD).
- 3 Public consultation on draft PBD change proposals was completed in June 2018. Consultation feedback has shown that the proposals should proceed as proposed, subject to one minor adjustment to the proposed purpose statement for the website PBD item. Consideration should also be given, in future, to adding a new PBD item related to employee numbers.
- 4 Submitters supported a separate proposal to amend the Act to give the NZBN Registrar suppression powers to manage privacy implications. That amendment, subject to future advice and approvals, will be progressed separately as part of Regulatory Systems Bill 3.
- 5 This paper informs Cabinet of my intention to exercise my authority under section 22 of the Act to recommend to the Governor-General that she make an Order in Council to progress a substantive, initial set of PBD changes. These are the changes that have no privacy implications and can proceed before the amendment to the Act noted in paragraph 4.
- 6 I do not seek Cabinet agreement to the PBD changes, but submit this paper as an informative briefing to enable other Ministers to comment and provide information that I may legitimately take into account when finalising my decision under section 22 of the Act. This is consistent with advice in the Cabinet Manual that:
  - 6.1 *"Special considerations apply to protect the integrity of the statutory decision-making process when a Minister brings an item to Cabinet on a statutory*

*decision or action he or she intends to make. Cabinet cannot make, or appear to make, a decision that the statute requires a Minister to make...*" and

6.2 "...the Minister's intended decision should be noted rather than agreed to by Cabinet."

7 It also informs Cabinet of the few PBD changes that have privacy implications for unincorporated entities (e.g. sole traders and trustees) and will not be progressed until after the amendment to the Act noted in paragraph 4.

## **Background**

### ***The NZBN and primary business data***

8 An NZBN is a globally unique identifier, available to all entities in business in New Zealand. Each NZBN links directly to core information about a business on the NZBN Register. The Act describes the core business information that must be made public on the NZBN Register and additional information that may be kept on the Register as either private or public.

9 Schedules 3 and 4 of the Act deal with 'public PBD' and 'other PBD' respectively. There are currently different PBD requirements for 'corporate and public entities' and 'unincorporated entities', as set out in Parts 1 and 2 of those two Schedules.

10 *Corporate and public entities* are any entity already on a public register listed in Schedule 2 of the Act (e.g. a company or incorporated society), government agency, any other body corporate or a corporation sole, and any other entity declared by regulations to be a corporate or public entity for the purposes of the Act.

11 *Unincorporated entities* are any other entity in business in New Zealand. Examples are a sole trader, a partnership, a trustee and an unincorporated community group.

12 On 7 May 2018 Cabinet agreed to public consultation on PBD change proposals and invited me to report back to the Cabinet Economic Development Committee (DEV) by October 2018 with final policy proposals and any associated legislative changes or additions [CAB-18-MIN-0191 and DEV-18-MIN-0056 refer].

### ***Drivers for the change proposals and public consultation***

13 The public consultation, undertaken during May-June 2018, responded to feedback from government agencies and businesses that changes are needed to:

13.1 clarify PBD purposes and improve reliability, availability and value of PBD;

13.2 help increase business transparency, reduce misinterpretation or misuse of PBD, and improve opportunities to use PBD to detect criminal activity;

13.3 remove PBD items that do not help to achieve the purposes of the Act; and

13.4 ensure that information on the NZBN Register includes:

- 13.4.1 reliable identification of the business entity, its activities and who controls the business;
  - 13.4.2 the full range of business addresses and other contact details; and
  - 13.4.3 information routinely used in procurement and payment transactions.
- 14 The changes also reflect:
- 14.1 an increasing focus on business-to-business transactions as well as government-to-business transactions;
  - 14.2 frustrations related to the limited public PBD for unincorporated entities; and
  - 14.3 progress made towards achieving mutual recognition of business identifiers as part of the Single Economic Market Agenda with Australia.

## **Comment**

### ***Overview of public consultation outcomes***

- 15 Six New Zealand submissions were received from BusinessNZ, Centrix, GS1 New Zealand (GS1), Vigilance Ltd, Wellington Chamber of Commerce and Xero. Overall, the submissions were positive and supported the change proposals. Submitters confirmed that changes are needed and, over time, they expect that the changes will help to encourage more businesses to use the NZBN.
- 16 Feedback also confirmed that the changes would strike the right balance between public and other (private) PBD, and that amending the Act to give the NZBN Registrar suppression powers to manage potential privacy concerns is appropriate. The submitters did not identify any other concerns about how the changes might impact on a type or group of businesses.

### ***Employee numbers: A possible, future addition to the Register***

- 17 Submitters agreed that the NZBN Register should only contain core business information most commonly used in business transactions and should not become a repository of general business statistics. However, some submitters argued that:
- 17.1 employee numbers should be included as PBD as this information is regularly used in certain business transactions, will help to improve business transparency and, in time, could reduce Statistics New Zealand (SNZ) survey compliance costs; and
  - 17.2 costs associated with maintaining such data on the register could be minimised by enabling businesses to enter employee numbers within a range.
- 18 Before final decisions about this possible addition can be made, further policy work and consultation with government agencies will be necessary (e.g. on details such as employees v full-time-equivalents and the most appropriate ranges). Therefore I do not propose to include this addition at this time.

### **Website addresses**

- 19 Submitters supported inclusion of public website information as public PBD. Two submitters suggested that the words “*and the primary purpose of each website (if there is more than one)*” be removed from the proposed purpose statement for the website PBD item. I support this removal as I agree that, while this purpose information is useful for telephone and email PBD, it is not useful for websites.
- 20 Submitters also pointed out that businesses use and may wish to include other on-line channels (e.g. Facebook, Instagram, Trademe stores, Amazon, EBay) and that sites like LinkedIn may serve as a website equivalent for an independent contractor. This issue can be addressed after changes are made, by ensuring that guidance materials explain clearly what is required and what businesses can choose to include on the NZBN Register if they have an on-line presence other than their own website(s).

### **Transparency International feedback**

- 21 On 2 May 2018, when considering the public consultation document, DEV Ministers indicated that they would like Transparency International New Zealand (TINZ) to be consulted. TINZ has since reviewed the PBD changes proposals, confirmed its broad support, and submitted that:
- 21.1 Proposals to make public information additional on companies would support efforts to increase transparency and should be considered together with the ongoing consultation on increasing the transparency of beneficial ownership.
- 21.2 Proposals to enhance the transparency of unincorporated entities are important to mitigate any increase in risk of misuse caused by a potential displacement effect as enhanced measures are put in place for companies.
- 21.3 The proposals to make public additional information would enhance the efficient operation of the Anti-Money Laundering and Countering Financing of Terrorism regulatory regime by helping regulated businesses to conduct customer due diligence.

### **The New Zealand Labour Party (Commerce Committee) minority view**

- 22 On 2 May 2018, DEV Ministers asked that, when proposing the final changes, I take account of the New Zealand Labour Party (NZLP) minority view on the New Zealand Business Number Bill as reported from the Commerce Committee in 2015. I have done this and have concluded that the substantive concerns in that NZLP minority view have been resolved, or will be addressed through the PBD changes and wider, ongoing NZBN implementation activities.
- 23 New Government NZBN implementation directions to departments and Crown entities, including WorkSafe NZ and Immigration NZ (as part of MBIE), will shortly come into effect. The directions set out clear requirements and milestones that will help to ensure the promised NZBN benefits are realised in a timely manner.

- 24 Leveraging the NZBN to deliver new initiatives, such as electronic invoicing, to drive efficiency and productivity improvements in both local and international business transactions is also expected to deliver significant, wider economic benefits.

### ***Ministerial authority to progress the PBD changes***

- 25 Section 22 of the Act authorises me, as the responsible Minister, to progress the PBD changes by recommending to the Governor-General that she makes an Order in Council. Section 22 also sets out requirements that must be met before an Order is made (including requirements that I consult with the Privacy Commissioner and have regard to the advantages and disadvantages of the information being included in the NZBN Register).

- 26 I am satisfied that that the section 22 requirements have been met by:

26.1 consultation with the Office of the Privacy Commissioner in the course of finalising the PBD change proposals for public consultation and this Cabinet paper; and

26.2 the comments in the public discussion document that describe the rationale for each change and, where relevant, explain how the advantages of the change outweigh the disadvantages.

- 27 Changes made using the section 22 process would not alter the requirements of section 20 of the Act. Those requirements mean that the NZBN Register must contain all the Schedule 3 PBD (as applicable), whereas Schedule 4 PBD is largely optional.

- 28 Consistent with paragraph 5.36 of the Cabinet Manual, I have submitted this paper as an informative briefing to enable other Ministers to comment and provide information that I may legitimately take into account when finalising my decision under section 22 of the Act. The Cabinet Manual includes advice that, for such decisions:

28.1 *“Special considerations apply to protect the integrity of the statutory decision-making process when a Minister brings an item to Cabinet on a statutory decision or action he or she intends to make. Cabinet cannot make, or appear to make, a decision that the statute requires a Minister to make...”* and

28.2 *“...the Minister's intended decision should be noted rather than agreed to by Cabinet.”*

### ***Progressing the PBD changes in two phases***

- 29 As outlined below, the PBD changes need to proceed in two phases:

29.1 **Phase One:** Initial changes that have no privacy implications and can be progressed relatively quickly by Order in Council, as provided for in section 22 of the NZBN Act 2016; and

29.2 **Phase Two:** Further changes that have privacy implications for unincorporated entities and should not progress until the Act has been

amended to enable the NZBN Registrar to suppress public PBD for unincorporated entities. Those changes are making public on the NZBN Register the following PBD items for unincorporated entities:

29.2.1 Legal entity name

29.2.2 Directors

29.2.3 Trading names

29.2.4 Owner.

- 30 The privacy implications for unincorporated entities arise because some of these entities, such as sole traders, are individuals and the PBD is also personal information. In some circumstances, PBD should not be public on the NZBN Register. For example, where public PBD creates or exacerbates a personal safety risk for the individual or their family.
- 31 Subject to future advice and approvals, I expect that the Phase Two changes and the suppression amendment will be able to be progressed separately as part of Regulatory Systems Bill 3, and come into effect in late 2019 or early 2020.
- 32 To help ensure timely implementation of both the initial (Phase One) and subsequent (Phase Two) PBD changes, I am informing Cabinet of all the PBD changes at once. The changes are exactly as they were proposed in the May 2018 public discussion document '*NZBN Primary Business Data change proposals*, with one exception. That exception is a shortened purpose statement for the website PBD item (paragraph 18 refers).
- 33 The changes involve:
- 33.1 adding a purpose description for each PDB item;
  - 33.2 rationalising and adding to the suite of PBD address items to ensure that all the addresses routinely used for business transactions can be included on the NZBN Register;
  - 33.3 further changes to help resolve uncertainty about the purpose of some of the current PBD address items;
  - 33.4 removing and/or replacing PBD items where there is a strong consensus that the items are of little value on the Register and, where relevant, a new PBD item better meets the needs of government agencies or businesses;
  - 33.5 adding new PBD items where there is a strong consensus that the new items will substantially improve the utility of the NZBN; and
  - 33.6 changing the default for some PBD items from 'other PBD' (i.e. private) to 'public PBD'.
- 34 Appendix One shows the current PBD as it appears in Schedules 3 and 4 of the Act and Appendix Two shows what the content of the Schedules would be after the initial (Phase One) PBD changes are made.

## **Consultation**

- 35 During February 2018, all 93 government agencies subject to the government NZBN directions, the Office of the Privacy Commissioner and the Office of the Chief Government Privacy Officer had an opportunity to comment on detailed draft PBD change proposals. Comments received were addressed in finalising the public consultation proposals.
- 36 Public consultation on draft PBD change proposals was completed in June 2018. Consultation outcomes are summarised in paragraphs 14-19.
- 37 Departments and others consulted about this Cabinet paper were: Inland Revenue, Customs, Primary Industries, Prime Minister and Cabinet, Justice, Treasury, Callaghan Innovation, Statistics, ACC, NZ Trade and Enterprise, Office of the Privacy Commissioner, Government Chief Privacy Officer.
- 38 Feedback received has been considered and addressed in this paper.

## **Financial Implications**

- 39 The PBD change proposals have no significant financial implications. Changes to the NZBN Register and Ministry of Business Innovation and Employment (MBIE) NZBN application programming interface facilities that enable data to be consumed directly from the Register will be funded from existing appropriations.

## **Legislative Implications**

- 40 As noted above, Section 22 of the Act authorises me, as the responsible Minister, to progress the PBD changes by recommending to the Governor-General that she makes an Order in Council.

## **Impact Analysis**

- 41 A regulatory impact assessment (RIA) exemption was sought and obtained from the Treasury. The Regulatory Quality Team at The Treasury agrees that no formal RIA is required in support of this proposal, since the impacts on businesses are expected to be minor and mainly positive.

## **Human Rights**

- 42 The PBD change proposals have no human rights implications and are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

## **Gender Implications**

- 43 The PBD change proposals have no gender implications.

## **Disability Perspective**

- 44 The PBD change proposals do not require a disability perspective in this paper.

## Publicity

- 45 I do not propose to issue a media statement about the policy decisions sought in this paper. As evidenced by the positive consultation feedback, public interest is limited and the PBD change proposals have been well-received.

## Proactive Release

- 46 I propose to release this paper proactively so the consultation outcomes and the Government's response to submissions are publicly available.

## Recommendations

I recommend that the Committee:

- 1 **note** that schedules 3 and 4 of the New Zealand Business Number Act 2016 (the Act) specify:
  - 1.1 'primary business data' (PBD) that must be provided and made public on the NZBN Register; and
  - 1.2 other PBD that may be provided voluntarily and either kept private or made public on the Register;
- 2 **note** that public consultation on PBD change proposals, approved by Cabinet on 7 May 2018 [CAB-18-MIN-0191 and DEV-18-MIN-0056 refer] and completed in June 2018, supported all the change proposals in the May 2018 public discussion document '*NZBN Primary Business Data change proposals*', namely:
  - 2.1 adding a purpose description for each PDB item;
  - 2.2 rationalising and adding to the suite of PBD address items to ensure that all the addresses routinely used for business transactions can be included on the NZBN Register;
  - 2.3 further changes to help resolve uncertainty about the purpose of some of the current PBD address items;
  - 2.4 removing and/or replacing PBD items where there is a strong consensus that the items are of little value on the Register and, where relevant, a new PBD item better meets the needs of government agencies or businesses;
  - 2.5 adding new PBD items where there is a strong consensus that the new items will substantially improve the utility of the NZBN; and
  - 2.6 changing the default for some PBD items from 'other PBD' (i.e. private) to 'public PBD';
- 3 **note** that I intend to recommend to the Governor-General that she make an Order in Council under section 22 of the Act to give effect to all the PBD changes as proposed in the May 2018 public discussion document, subject to:

- 3.1 removing the words “*and the primary purpose of each website (if there is more than one)*” from the proposed purpose statement for the website PBD item; and
- 3.2 the following four PBD items, for unincorporated entities, not becoming public on the NZBN Register until after the Act has been amended to give the NZBN Registrar new powers to suppress public PBD for unincorporated entities:
  - 3.2.1 Legal entity name;
  - 3.2.2 Directors;
  - 3.2.3 Trading names;
  - 3.2.4 Owner;
- 4 **note** that, subject to future advice and approvals, the changes and the suppression amendment referred to in recommendation 3.2 will likely be progressed as part of Regulatory Systems Bill 3 and come into effect in late 2019 or early 2020;
- 5 **invite** the Minister for Small Business to issue drafting instructions to the Parliamentary Counsel Office for an Order in Council under section 22 of the Act to progress the PBD changes in accordance with recommendation 3; and
- 6 **agree** that the Minister for Small Business can approve minor policy or technical modifications to address any issues that may arise during the drafting process.

Authorised for lodgement

Hon Stuart Nash  
Minister for Small Business

## Appendix One: Schedules 3 and 4 of the Act (Current)

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### SCHEDULE 3: PUBLIC PRIMARY BUSINESS DATA

#### Part 1: Public primary business data for corporate and public entities

Legal entity name	Trading name or names
Registered address	Location identifier
NZBN	Start date
Kind of entity	Status

#### Part 2: Public primary business data for unincorporated entities

Location identifier	NZBN
Start date	Kind of entity
Status	

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### SCHEDULE 4: OTHER PRIMARY BUSINESS DATA

#### Part 1: Other primary business data for corporate and public entities

Industry classification	GST status
GST effective date	Postal address
Physical address	Principal place of activity
Director(s)	Website
Phone number	Email
Other address(es)	Australian Business Number
Australian Company Number	Australian service address
Owner	

#### Part 2: Other primary business data for unincorporated entities

Legal entity name	Industry classification
GST status	GST effective date
Registered address	Postal address
Physical address	Principal place of activity
Director(s)	Website
Trading name(s)	Phone number
Email	Other address(es)
Australian Business Number	Australian Company Number
Australian service address	Owner

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## **Appendix Two: Schedules 3 and 4 of the Act (Proposed for Phase One, initial changes)**

### **Schedule 3: Part 1 – Public Primary Business Data for corporate and public entities**

<b>PBD item</b>	<b>Purpose of the item</b>
Legal entity name	To enable the NZBN entity to be identified by its official (proper, legal) name
Trading name or names	To enable the NZBN entity to be identified by any other names it uses for business purposes
Registered address	Where the NZBN entity is a company registered under the Companies Act 1993, or a limited partnership under the Limited Partnerships Act 2008, to record the address of the registered office of the company, or the limited partnership, consistent with the requirements of those Acts
Trading area(s)	To identify the geographic areas where the NZBN entity routinely conducts, or is available to conduct, its business activities in New Zealand
NZBN	To identify the NZBN allocated by the NZBN Registrar to the NZBN entity
Kind of entity	To identify the kind of entity in terms of how different entities are described in this Act
Status	To identify whether NZBN registration is current and any solvency issues
Industry classification	To identify the class(es) of business activity undertaken by the NZBN entity using the New Zealand government business industry classification (BIC) codes
Director(s)	To identify the people who govern the NZBN entity and its finances
Website	To identify the website address(es) of the NZBN entity's public-facing websites (if any)
Owner	To identify the people, or other entities, who own the NZBN entity

### **Schedule 3: Part 2 – Public Primary Business Data for unincorporated entities**

<b>PBD item</b>	<b>Purpose of the item</b>
Trading area(s)	To identify the geographic areas where the NZBN entity routinely conducts, or is available to conduct, its business activities in New Zealand
NZBN	To identify the NZBN allocated by the NZBN Registrar to the NZBN entity
Kind of entity	To identify the kind of entity in terms of how different entities are described in this Act
Status	To identify whether NZBN registration is current and any solvency issues
Industry classification	To identify the class(es) of business activity undertaken by the NZBN entity using the New Zealand government business industry classification (BIC) codes
Website	To identify the website address(es) of the NZBN entity's public-facing websites (if any)

#### Schedule 4: Part 1 – Other Primary Business Data for corporate and public entities

<b>PBD item</b>	<b>Purpose of the item</b>
Phone number	To identify the contact phone numbers for the NZBN entity and the primary purpose for each number (if there is more than one)
Email	To identify the email addresses for the NZBN entity and the primary purpose for each email address (if there is more than one)
Postal address	To identify the address the NZBN entity uses to receive physical postal deliveries
Address for service	To identify the NZBN entity's physical address in New Zealand at which writs, summons, notices and other legal documents can be served (as appropriate) on the entity, its management/employees and/or its Director(s) or Owner(s)
Office address	To identify the address where the NZBN entity's administrative headquarters are located
Delivery address	To identify the primary, physical address at which the NZBN entity wishes to receive physical deliveries of 'goods' and other items that are not postal deliveries
Invoice address	To identify the address the NZBN entity uses to receive deliveries of invoices
GST Number	To identify the NZBN entity's GST number(s), if any
Payment bank account number	To identify the primary bank account the NZBN entity uses to receive payments
Australian Business Number (ABN)	To identify the NZBN entity's ABN (if any)

#### Schedule 4: Part 2 – Other Primary Business Data for unincorporated entities

<b>PBD item</b>	<b>Purpose of the item</b>
Legal entity name	To enable the NZBN entity to be identified by its official (proper, legal) name
Trading name or names	To enable the NZBN entity to be identified by any other names it uses for business purposes
Director(s)	To identify the people who govern the NZBN entity and its finances
Owner	To identify the people, or other entities, who own the NZBN entity
Phone number	To identify the contact phone numbers for the NZBN entity and the primary purpose for each number (if there is more than one)
Email	To identify the email addresses for the NZBN entity and the primary purpose for each email address (if there is more than one)
Postal address	To identify the address the NZBN entity uses to receive physical postal deliveries
Address for service	To identify the NZBN entity's physical address in New Zealand at which writs, summons, notices and other legal documents can be served (as appropriate) on the entity, its management/employees and/or its Director(s) or Owner(s)
Office address	To identify the address where the NZBN entity's administrative headquarters are located
Delivery address	To identify the primary, physical address at which the NZBN entity wishes to receive physical deliveries of 'goods' and other items that are not postal deliveries
Invoice address	To identify the address the NZBN entity uses to receive deliveries of invoices
GST Number	To identify the NZBN entity's GST number(s), if any
Payment bank account number	To identify the primary bank account the NZBN entity uses to receive payments
Australian Business Number (ABN)	To identify the NZBN entity's ABN (if any)