



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Modernising the Companies Act 1993 and Making Other Improvements for Business	Date to be published	15 August 2024

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business	Office of the Minister for Commerce and Consumer Affairs
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business ECO-24-MIN-0149 Minute	Cabinet Office
31 July 2024	Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption	MBIE
31 July 2024	Appendix 2: Amendments to RSB 3 proposals	MBIE
31 July 2024	Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes	MBIE
31 July 2024	Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN	MBIE
31 July 2024	Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships CAB-21-MIN-0539.01 Minute	Cabinet Office
31 July 2024	Appendix 6: NZBN legislative proposals – additional detail	MBIE
31 July 2024	Appendix 7: Business registers and associated legislation in scope for NZBN changes	MBIE

Information redacted

YES / NO (please select)

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. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Confidential advice to Government.

Appendix 6: NZBN legislative proposals – additional detail

Make more information public by default

1. In 2018, Cabinet noted the Minister for Small Business' intention to make unincorporated entities' legal/trading names, and owners/directors' names public by default, as is the case for companies, and that the change would be made by Order in Council (CAB-18-MIN-0466). To manage any risks around making this information public, Cabinet has also agreed that a person may apply to the NZBN Registrar to suppress this information if releasing it would risk their or their family's personal safety or privacy (CAB-19-MIN-0362). As these two proposals are mutually linked, I propose to advance them together in the same primary legislation.
2. Unincorporated entities include sole traders, partnerships and trusts. On the NZBN register the term owner(s)/director(s) are used to identify the individuals who govern or run the relevant entity.

Make it easier for government agencies to require an NZBN as a condition of service

3. Use of the NZBN by government agencies is patchy despite Government Directions requiring them to use it (or at least consider using it) being in place since 2016. Section 29 of the NZBN Act is contributing to the problem. It sets out that if a government agency wants to require a business to provide it with an NZBN as a condition of service, it must undertake regulatory analysis, consult with the Office of the Privacy Commissioner (**OPC**) and then obtain Cabinet's approval for an Order in Council. This resource intensive process deters agencies from using the NZBN. Without certainty that they can require an NZBN, they are less likely to build it into their systems.
4. The requirement for consultation with the OPC is meant to address concerns the Privacy Commissioner had at the time the NZBN Act was established – namely, that it could become a de facto requirement based on only operational considerations, to the detriment of businesses' right to control their information. But experience suggests that this degree of caution is unwarranted. To MBIE's knowledge, the NZBN has never given rise to a privacy complaint, and the OPC now supports making more information on the NZBN register public by default. All businesses accessing COVID-19 financial support had to provide NZBNs, and no issues arose.
5. In light of these learnings, I propose to remove the current Order in Council process from the NZBN Act and replace it with a provision enabling agencies to require an NZBN as a condition of service, so long as this is consistent with the purposes of the NZBN Act and the legislation under which the agency is providing the service. As part of this change, the current regulations governing mandatory NZBN use would be revoked.

Enable the NZBN to be used for MBIE's other registers

6. MBIE administers the NZBN register alongside several other business registers (eg the Companies register). These other registers, referred to below as MBIE registers, are listed in **Appendix 7**. The legislation governing some MBIE registers predates the NZBN Act and as such does not permit:
 - 6.1. the NZBN to be used as a business identifier for that register;

- 6.2. updates to the register to be made on the basis of information held on the NZBN register.
7. This defeats the purpose of the NZBN, which is to enable businesses to provide information to government once only, in the expectation that it will be re-used for different interactions. Businesses might legitimately expect that MBIE re-uses information they provide for all the registers it administers, rather than requesting the same information anew each time.
8. The NZBN needs to be more closely linked to and be available to be used as a ‘source of truth’ for core business information on other MBIE registers. To enable this, the legislation governing other MBIE registers needs to change. While the specific legislative changes will depend on the register in question, the broad policy intent is to enable:
 - 8.1. the NZBN to be used as a business identifier for other MBIE registers;
 - 8.2. core business information on other MBIE registers to be kept up to date using information held on the NZBN register (via direct exchange of information between the two registers).
9. Each MBIE register has its own registrar (although in practical terms, it is often the same person). The relevant registrar would be able to decide when the NZBN will be introduced as a permitted business identifier, and what information will be accessed from the NZBN register. To achieve this, an information sharing provision will be inserted into the legislation governing the MBIE registers listed in **Appendix 7**. It will enable core business data on MBIE registers to be sourced directly from the NZBN register, at the sole discretion of the relevant MBIE registrar.
10. Some information on the NZBN register can be set to ‘private’. In cases where information is set to private, the relevant MBIE registrar would not have discretion to access that information. This avoids a situation where information is set to private on the NZBN register, but then is made public on another MBIE register.

Additional changes to the schedules

11. The following changes require amendments to the schedules in the NZBN Act which can be done by Order in Council:
 - 11.1. *Introduce bank account numbers and names to the NZBN register.* In 2018 Cabinet agreed to add bank account numbers to the NZBN register (CAB-18-MIN-0635), but MBIE has not yet implemented this change. It has plans to put bank account numbers on the NZBN register. As banks are intending to introduce name and account number checking, adding the name of the bank account would enable cross-check using the NZBN register.
 - 11.2. *Introduce a Small Business Identifier to the NZBN register.* In February 2024, Cabinet noted that the Minister of Small Business and Manufacturing intends to work with business leaders on an industry-led voluntary code on business payment times (CAB-24-MIN-0031). Business leaders have informed me that the potentially advantageous payment terms this code will contain should apply first and foremost to their smaller suppliers, as small businesses tend to be more reliant on cashflow.

- 11.3. Accordingly, business leaders have requested that the NZBN register feature a ‘small business identifier’ that code signatories can use to find out which of their suppliers the code should apply to. This would be a useful support for the voluntary code. I do not want the NZBN Act to set out a statutory definition of a small business, however. This would invite unnecessary contention, as different definitions of small business are used in different contexts.
- 11.4. Instead, I propose that Schedule 4 of the NZBN Act include a field enabling businesses to identify themselves as a small business for the purpose of facilitating business-to-business interactions. The NZBN Registrar will provide guidance to help businesses decide whether to identify as a small business. This will reflect the provisions of the voluntary code on payment times currently being developed by Business NZ.
- 11.5. MBIE will not seek to verify this data field as it will rely on self-declaration. If an end user needs to verify an entity’s size, it would need to do that itself. This is consistent with the approach already taken to the Māori Business Identifier.
- 11.6. *Align the Māori Business Identifier with Statistic NZ’s definition of a Māori business.* In 2020, Cabinet agreed to amend the NZBN register to allow for a Māori Business Identifier (MBI) (LEG-20-MIN-0132). However, as it stands, any business can self-identify as Māori and get an MBI; there is no requirement for the owner(s) to have Māori whakapapa. In 2022, Statistics NZ launched a Māori Business ‘data standard’. It sets out that only businesses with some Māori ownership can be considered a Māori business. The proposal ensures that there is only one definition of Māori business used in government.