

**New Zealand Business Number Government Discussion Document**

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**Submission by the Privacy Commissioner  
to the Ministry of Business, Innovation and Employment  
NZBN Programme**

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 **Privacy Commissioner**  
Te Mana Matapono Matatapu

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## **Introduction and summary**

This submission focuses on the privacy implications of the proposed extension of the New Zealand Business Number (NZBN) to include sole traders. In this submission I refer to sole traders as a term of convenience, however, in many cases my comments will apply equally to all unincorporated bodies where personal information may be implicated.

The Privacy Act only covers information about identifiable individuals. The Privacy Act does not apply to companies. Consequently, my primary interest in the NZBN is in the privacy of sole traders and other individuals in business. Individuals who set themselves up as a company, and therefore avail themselves of the benefits of limited liability, also take on the public responsibilities that go with those benefits. These include publication of some personal information.

In a general sense, personal information associated with business activities is often considered to have a relatively lower privacy value. Businesses generally want potential customers to know they are in business, and how to get in touch with them. Risks can arise, however, where the personal and business affairs of sole traders are closely interconnected. It can be difficult to draw a line between where business activity stops and personal activity starts.

It should be possible to obtain the benefits of the NZBN while also achieving privacy goals. The discussion document notes that businesses themselves have indicated that they want their personal and commercial information to be protected. The privacy impacts of assigning NZBNs to sole traders will depend on how they are assigned, and any statutory limitations on how they may be used.

## **Assumptions about the system design**

There are a number of details about the creation of the NZBN that are still to be determined. In making the recommendations above, I have made three key assumptions about how the NZBN will be implemented, specifically that:

- there will be a publicly searchable register of businesses and their NZBN
- the NZBN will be expressly authorised by legislation
- there will be no additional aggregation of information across departments as a result of creating the NZBN.

If these assumptions change I will be happy to revise this advice.

## **Principles important to an outcome supporting individual privacy**

My approach in this submission is guided by three principles that are important to achieving an outcome that supports individual privacy:

- Individuals should be able to continue to undertake business as usual without having to have a NZBN

- An individual should be able to access any service without using a NZBN, whether they have one or not
- Individuals should be able to maintain control over how information about them is accessed by agencies.

Given these principles, I consider there are several design choices that are important for sole traders to maintain their privacy while benefitting from the NZBN, specifically:

- The NZBN will require robust implementing legislation, both to authorise its expansion, and to put appropriate privacy safeguards in place for personal information
- Obtaining a NZBN should be voluntary for unincorporated individuals, both in law and in practice
- Some limited automatic allocation of NZBNs may be possible, so long as sole traders are provided with the opportunity to opt-out
- The NZBN should attach to the business, not the individual
- Only a limited amount of core information should be stored as part of any central register
- Limiting publicly facing information to an entity's trading name, NZBN, industry code and location will minimise any risk of privacy harm
- There is no privacy barrier to sole traders allowing further information to be made available
- Government departments should have access only to the information to which they are currently entitled
- There must be a mechanism that allows individuals to have agencies maintain different details (particularly address details) to those on the register.

The Ministry of Business, Innovation and Employment has identified privacy for sole traders as a significant consideration in the extension of the NZBN, and has engaged constructively with my office to make sure privacy can be adequately protected.

### **Sole traders should be able to get a NZBN**

It is likely that in order to achieve the full benefit of the NZBN to the wider economy, sole traders will need to be able to obtain a NZBN. Sole traders make up a significant proportion of New Zealand businesses. Because they lack economies of scale, sole traders potentially have much to gain from the adoption of the NZBN, and any associated reduction in compliance costs through dealing with government.

### **Adoption of the NZBN should be voluntary**

Sole traders should not, however, be required by law to obtain a NZBN. The construction of the NZBN may require sole traders to allow some personal information to be made more widely

available in exchange for more convenient interaction with government. Sole traders may not consider that trade-off desirable, particularly where they operate their business as a sideline to other employment, or where they work in a potentially sensitive occupation, such as sex work, or the mental health sector. Individuals in these and similar sectors might well be more cautious about having either their profession, or their personal information, widely known. Traders in less sensitive professions may also want to choose whether to use the number.

Voluntary participation in the NZBN also provides the greatest control to individuals, and is the best means of ensuring that individuals can carry out their business activities without having to have a NZBN. It is also a useful additional protection against inadvertent expansion of the NZBN's application to activities beyond business, because individuals concerned about its expanding scope are likely to opt out.

### **The NZBN needs robust implementing legislation**

Extension of the NZBN to sole traders will need robust implementing legislation in order to authorise the use of the NZBN as an identifier across multiple agencies for multiple purposes. Such legislation also needs to contain safeguards to protect individual privacy and needs to include a clear statement of the purpose of the NZBN, and its associated register. The purpose statement is important because it will set the scope and limits of the NZBN. It will need to be sufficiently well defined so that it is not overly broad or unclear.

Legislation will also provide a vehicle for privacy safeguards to protect against misuse or unintended consequences. The specific safeguards I consider necessary are set out below.

### **Unique identifiers need to be carefully managed**

The Privacy Act includes provisions to prevent the creation of a national unique identifier by accident. A significant motivation for these provisions was a desire to avoid a situation similar to that of the United States Social Security Number, which is widely required for many transactions in the United States.

The number was initially created solely for the distribution of social security benefits. Its use has gradually spread to the situation that exists today whereby it is routinely collected by public and private sector agencies to assist with identifying individuals. The number was not designed for this purpose however, and its widespread use as a national identifier is problematic as a result. In particular it plays a significant role in identity fraud.

Care needs to be taken to ensure the NZBN does not have unintended consequences for individuals. The NZBN is intended to make it easier to identify businesses and to connect information from different sources to the same business. However the ability to connect different pieces of information about individuals, and the expectation that individuals might be expected to prove their identity definitively in situations where it is not justified, are a significant source of privacy concerns about unique identifiers. These concerns are manageable, but the system design needs to expressly manage them.

**Use of the NZBN should be limited to business purposes**

The discussion document outlines a range of potential benefits to businesses from adoption of the NZBN, such as allowing businesses to update core information with multiple agencies in one place, linking businesses to professional registers, and streamlining business invoicing.

Because of concerns about the use of unique identifiers to identify individuals, however, it is important that the NZBN should be limited to use for business purposes unless individuals opt in on the basis of clear information and undertakings. It should not be used for other purposes such as identifying recipients of social services, or other non-business activities. This may create complications for agencies who deliver services to sole traders in a personal rather than a business capacity. Allowing these types of uses would threaten to expand the scope of the NZBN to cover the full range of individuals' activities.

Implementing legislation will need to ensure that it maintains existing protections in the Privacy Act that prohibit an agency from requiring a unique identifier for a purpose other than that for which it was created. Consideration should also be given to prohibiting agencies from using a NZBN for a purpose other than that set out in the legislation.

**The NZBN should attach to the business, not the individual**

I consider that NZBNs should attach to businesses, not individuals. Individuals should also have the option of having more than one NZBN. There are genuine privacy reasons for this approach.

Some individuals may operate more than one business that they want to keep distinct. They might want to take advantage of the opportunity to have their core information updated automatically with government through the NZBN register, but want to maintain some different details for each business.

Another possibility is that an individual's different businesses interests might be considered incompatible by some, and therefore a public facing link between the two businesses might be unhelpful – for instance an individual who provided child care services during the day, but undertook sex work in the evening. Assigning a single NZBN to both activities in this situation would make identification of each activity relatively simple. This would be possible from the public register of the NZBN if the identity of one part of the business was known.

I understand there is some concern with over-allocation of numbers, and the detrimental effect this would have on use of the number. It would be reasonable for sole traders to be limited to one number for any particular business activity, or for there to be an upper bound on the numbers that can be issued to an individual. This would allow for control of accidental over-allocation while still providing the facility for individuals to have more than one number.

Assignment of multiple NZBNs to different business activities would be broadly consistent with the rules for GST registration.

### **Protections are required to ensure that the right not to have a NZBN is respected in practice as well as in law**

There is a risk that obtaining a NZBN might become necessary in order to undertake a business, even if it were legally optional. This could result from government agencies or sectors (e.g. banking) requiring a NZBN for some business-related services. In order to prevent this, implementing legislation should prevent agencies from requiring an individual to provide a NZBN in order to receive a service or interact with government.

Individuals should be able to carry out business activities without registering as a business with a NZBN. This would be particularly important for those people who undertake business activities as a sideline to their main occupation. These people should be able to obtain a full range of services from government and the private sector without obtaining a NZBN.

### **Automatic assignment would require an easy opt-out mechanism**

As a general position, I would prefer to see an opt-in approach to adoption of the NZBN to sole traders. An individual should not have to make an extra effort in order to maintain their current levels of privacy. An opt-in approach best respects this principle.

However, it is clear that widespread use of the NZBN will be an important measure of its success, and that some form of automatic assignment of NZBNs (for instance to GST registered businesses) may be considered desirable.

If NZBNs are automatically assigned, there should be a straightforward mechanism for allowing sole traders to opt out. This would allow for maximising the number of sole traders who take up the NZBN 'by default' while still providing scope for individuals to opt-out if they considered the privacy costs outweighed the benefits.

Other options might also be considered, such as automatically assigning the NZBN, but requiring businesses to activate it before information is added to the register.

### **The register associated with the NZBN needs to be carefully managed**

Only a limited amount of information should be associated with a NZBN on the register of NZBNs. Care needs to be taken to ensure that the register itself remains an index, rather than becoming a database of information on New Zealand businesses, including sole traders. A certain amount of core information does need to be on the register, as suggested in the discussion document (name, address and industry code). This information should be defined by the legislation setting up the NZBN.

Generally businesses want potential customers to know they are in business, and how to contact them, and therefore there are fewer privacy concerns about basic contact information. Control over how information is made available can be important, however, particularly when business and personal information are one and the same.

The subset of NZBN, industry code and location appears to be a useful set that is unlikely to result in significant privacy risks for sole traders, particularly if participation is voluntary.

Businesses, including sole traders, may be comfortable with further information being made available on a voluntary basis. There is no obvious privacy concern with them being offered this choice.

**Government agencies should only have access to the information they are legally entitled to from the register**

Legislation setting up the NZBN should not change government agencies' legal ability to obtain information about individuals. Individuals should have the choice as to whether name and address information from the register will be pushed to agencies.

There also needs to be some mechanism to exempt agencies from automatic updates from the register so that a business can readily maintain separate address details with different agencies, for instance. Failure to provide these controls may make the NZBN more complicated for businesses to operate than it needs to be, and therefore reduce voluntary uptake.

**Conclusion**

I am confident that the NZBN can be set up to be an important contributor to business efficiency and productivity in New Zealand. To be most effective, it must also enable sole traders to maintain their autonomy, preserving their ability to go about their business without concern for their personal privacy. I hope the proposals contained in this submission go some way to achieving that goal.

A number of the more detailed elements of the NZBN are still to be decided. There will therefore be an ongoing need to consider privacy issues as the policy is developed. This will include the assessment of any technological solutions required to implement the NZBN.

I have been pleased with the level of engagement between the Ministry of Business, Industry and Employment and my office on this topic to date. I am committed to an ongoing and positive engagement with this work in future.