

New Zealand Business Number Bill 2015 No. 15-1

**Submission by the Privacy Commissioner
to the Commerce Committee**

June 2015



Privacy Commissioner
Te Mana Matapono Matatapu

Introduction and summary

1. This submission focuses on the privacy implications of the New Zealand Business Number Bill. I support this Bill and consider that extending the scope of the New Zealand Business Number (NZBN) is likely to contribute positively to Result 9 programme of the Government's Better Public Services initiative by helping to reduce the costs businesses face when dealing with government.
2. I am not concerned with the implications of this Bill for companies and other registered business entities because the Privacy Act covers only information about identifiable individuals. My primary focus in considering the proposals that have led to this Bill and in reviewing the draft legislation has therefore been to ensure appropriate safeguards are included to minimise any potential for adverse effects on individuals, and particularly those who choose to conduct their business activities as sole traders, and all other such unincorporated bodies.
3. I commend the Ministry of Business, Innovation and Employment (the Ministry) for the constructive and collegial manner in which its staff worked with my Office to ensure the potential privacy risks inherent in this initiative were identified and mitigated appropriately.
4. As the policy development leading to this Bill progressed, a number of options were considered that would have had potentially significant implications for individuals. A number of valuable changes were made to the scope and detail of the scheme in response to concerns we raised during policy development. In that regard I will not repeat in detail the comments I made in my April 2014 submission on the Discussion Document that canvassed public opinion on this matter, or my October 2014 submission on the exposure draft that preceded this Bill, but append both papers for ease of reference by the Committee.
5. The Bill before the Committee now includes a number of provisions designed to protect personal information under the scheme, including in direct response to the concerns we raised. The privacy safeguards included in the Bill will significantly reduce the potential privacy risks inherent in the proposed extension of the NZBN.
6. Only one of the concerns I have had about the NZBN initiative throughout its development remains outstanding. Under the Bill, NZBNs are assigned to legal entities, rather than according to business activity. This means that, even if individuals intentionally use different information with different government agencies and customers so that their distinct business activities are not linked, they will not be able to have more than one NZBN.
7. I consider the efficiency gains from automatic allocation of the NZBN and the potential for agencies to be able to require entities use the NZBN in their dealings should be balanced by enabling individuals with distinct business interests to have separate NZBNs.
8. The remainder of this submission
 - addresses this outstanding concern in greater detail and proposes a potential solution, and
 - briefs the Committee on the ways in which privacy principles have been incorporated into the design to date.

Background

9. The NZBN was introduced in December 2013 when it was allocated to over 1 million registered companies. By expanding application of the NZBN to cover a wider range of businesses, this Bill aims to achieve further efficiencies both for business and for government. I support this aim.
10. Figures the Ministry released to help inform consideration of the NZBN expansion proposal indicate that around 50% of businesses are sole traders (19%), trusts (15%) or partnerships (12%). The framework that supports NZBN expansion must adequately protect both the confidential business and personal information of individuals in such businesses if those efficiency goals are to be realised without imposing additional costs to individuals who wish to maintain more active control over the use of their information.
11. Clause 11 of the Bill prevents such entities from having more than one NZBN, despite the fact that individuals in business may choose to use different data in their transactions with different agencies. For example, a sole trader who works from home may want to use their residential address for transactions with one agency (or be under a statutory obligation to do so), but wish to use a different postal address for other business transactions.
12. In reporting on the regulatory impacts of this initiative, Ministry officials advised that allocating NZBNs to business activities, rather than legal entities engaging in business would entail high administrative costs to government and compliance costs for businesses, concluding that the costs would be likely to outweigh the benefits. Nonetheless, for sole traders, administrative efficiencies may be reduced and business costs increased if they must go to additional lengths to ensure the effective separation of their business activities.
13. Enabling sole traders to use different NZBNs for distinct business activities they wish to keep separate would be equitable and would afford them the efficiency gains available to other individuals who have multiple, but more formalised business interests. For example, there is nothing to prevent an individual incorporating multiple companies for their different business activities and having different numbers for each. Supporting individual autonomy in this way could also help to encourage wider uptake across the sector.
14. I do not propose that multiple NZBNs should be allocated without restrictions and recommend that the Bill be amended to provide the Registrar with the discretion to allocate more than one NZBN to an individual, provided they met certain prescribed criteria. This would be broadly consistent with the approach the Bill takes currently in terms of the registration of eligible entities and allocation of NZBNs.

Preferred option

15. Consistent with the scheme of clause 32 of the Bill, the Registrar could require an individual to provide any documentation or other information the Registrar considered necessary to verify the entity's business interests were sufficiently distinct, both in kind and in the manner of their administration, to justify different NZBNs. The onus would be on the individual to provide the evidence needed to support the Registrar's decision.

16. Furthermore, consistent with clause 14 of the Bill, the Registrar could be able to decline to register more than one NZBN to an individual if they considered it could undermine the integrity of the NZBN and the register; or would be inconsistent with any of the prescribed purposes of the Act.

This Bill contains many statutory safeguards I consider are critical to constrain the NZBN framework appropriately and provide for accountability and governance oversight.

17. The Bill contains a number of valuable privacy protections that constrain use of the NZBN as a unique identifier and limit the potential privacy risks for individuals. Simplification from the exposure draft has made the proposed operation of the provisions easier to follow.

18. First among the privacy enhancing mechanisms included in this Bill is specification of clearly defined purposes for the legislation. The importance of privacy is recognised in clause 3 of the Bill which prescribes, as one of the four main purposes of the Act, the need to “protect the security and confidentiality of information and the privacy of individuals in business”.

19. Operational provisions in the Bill addressing matters of scope and governance have been designed specifically to minimise privacy risks, while practical and appropriate penalties have been included to address misuse and incentivise compliance.

20. The largest risks posed by this policy are minimised by the prohibition on use of the NZBN in relation to individuals acting in their private capacity. Other tangible privacy protections that should be retained in the legislation include controls to:

- prevent assignment of NZBNs to individuals who are not business entities (clause 12)
- limit what may be contained in the register to applicable primary business data and define what primary business data means and restrict the information that must be made public (public primary business data), enabling individuals to add additional information if they chose to do so (clauses 20 and 21)
- restrict searching of the register by both the public and by agencies while enabling government agencies to access information in the register if another enactment authorises the agency to collect that information (clauses 24 and 27)
- authorise use of the NZBN for the specified purposes only and prevent agencies who have not been approved, by regulation, as mandating agencies from requiring businesses to use their NZBN to access services (clauses 25, 28 and 29).

21. The Bill also includes governance and enforcement mechanisms designed to ensure the scheme can be monitored and moderated, its impacts assessed, and any emerging privacy risks managed appropriately. In this regard I support retaining the provisions in the Bill that:

- require consultation with me before an Order in Council is made to add or delete any information or type of information prescribed as primary business data (clause 22)
- require consultation with me before regulations are made to declare an agency to be an authorised agency or a mandating agency (or to revoke that authority) (clause 29)

- enable me to require the Registrar to report to me on the operation of the register so I can assess its effects on the privacy of individuals in business (clause 35)
- introduce new offence provisions (and heavy penalties) for parties who use false NZBNs or make false or misleading statements to the Registrar (clauses 39 and 40).

22. The information designated as publicly accessible primary business data has been expanded in the Bill to include the start date for the business, the type of entity (e.g. sole trader, partnership) and the business status (e.g. active or inactive). I consider this information is appropriate to achieve the register's aims and support its functionality and it does not raise privacy concerns.

Conclusion

23. In my April 2014 submission on the public discussion paper that preceded this draft Bill, I noted that a number of details of the design of the NZBN, and how it would be implemented, were still to be determined. My recommendations at that time were predicated on the NZBN being expressly authorised by legislation, and the premise that while there would be a publicly searchable NZBN register, the NZBN would result in no additional aggregation of information across departments, or collection beyond that provided by existing authorities.

24. I am satisfied that the Bill contains a number of valuable safeguards to help ensure personal privacy is protected appropriately. However, as noted above, I consider increased flexibility for individuals in business would help to ensure a more equitable and potentially more effective and efficient scheme in the long term.

25. In closing, I would like to again acknowledge the Ministry for its open engagement with my Office and for its responsiveness to the concerns we have raised. I would like particularly to commend the Ministry for its pragmatic and iterative approach to consultation with my staff and for its willingness to ensure privacy values are incorporated into the NZBN framework to maximise the public good the law aims to facilitate.

26. I am available to speak to this submission at the Committee's convenience.

John Edwards
Privacy Commissioner