

11 April 2014

NZBN Programme
Ministry of Business, Innovation and Employment
PO Box 10729
Wellington 6143

By email: nzbn@mbie.govt.nz

New Zealand Business Number proposal (March 2014)

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Government discussion document, *Less Admin, More Business – New Zealand Business Number March 2014* (discussion document).
2. The relatively short consultation period (four weeks) has limited our ability to consider the proposal more fully, but preliminary comments are noted below. The Law Society looks forward to examining the Bill that is expected to be introduced to Parliament in August 2014.

Summary of Law Society's concerns

3. The Law Society has considered the discussion document and Preliminary Privacy Impact Assessment (PIIA) of the current NZBN proposal – the key elements of which are summarised below. It has concerns about its privacy impacts and risks.
4. The most significant concerns relate to the risk, identified in the discussion document and PPIA, that the NZBN issued to approximately 500,000 individuals in business will become a de facto unique identifier.
5. The papers do not provide an adequate analysis of the very real privacy risks associated with the proposal. Nor do they provide adequate assurance that the risks will be appropriately mitigated.
6. Indeed, appropriate analysis and mitigation are not possible until the exact scope and details of the proposal have been determined. As the PPIA notes, crucial decisions about the proposal – including decisions as to the personal information to be shared, and the responsibilities, governance arrangements, and accountability for protecting the information – are still to be made.
7. Given that crucial decisions are still outstanding, it is premature to propose a legislative override of Privacy Act Principle 12(2) to allow the use of the NZBN as a unique identifier of individuals in business.

Key elements of the proposal

Unique identifier of individuals in business

8. The NZBN proposal is that there will be a “... unique number for all businesses in New Zealand, linked to your information, managed from one place, to be used by government, the general public and your business partners”.¹
9. The NZBN is a unique identifier that:
 - will be assigned to approximately 500,000 individuals,
 - will make information about their businesses publicly available, and
 - is intended to be widely used by government and the private sector.²
10. It is proposed that mandatory publication of NZBN-related information will be limited to “primary business data”: the NZBN number, BIC (business industry classification code), and location (region). “Beyond that small amount of anonymous information, businesses should be able to choose what they make public [such as name, location and contact information]”,³ through an opt-in mechanism. The discussion document also proposes permitting government agencies that deal with a business, routine access to NZBN-associated information beyond that which is required to be made publicly available – this routine access “may be limited to the name of the business owner, the trading name of the business, and an address for contact.”⁴
11. It is proposed that legislation will be introduced in August 2014 to permit use of the NZBN across both the public and private sectors for business purposes. It will allow government agencies to use the NZBN information to keep their records up-to-date; otherwise decisions on “... what information is accessed by whom, when and for what purpose” will be made by the business itself. The discussion document states that the legislation will be designed to address the risks around the misuse of unique identifiers.⁵
12. The discussion document proposes that the NZBN unique identifier should be allocated to individuals in business such as sole traders, partnerships and trusts – so that the NZBN is allocated to the person, not the trading activity/activities carried out. This is the preferred approach “... as it is simple and will mean that a person can only ever be linked to one NZBN in their own right”. The discussion document acknowledges that a disadvantage is that “... *the NZBN could become a de facto identifier of individuals rather than of trading activity*” (emphasis added).⁶

Preliminary privacy impact assessment: importance of involvement of Privacy Commissioner

13. The proposal is accompanied by a Preliminary Privacy Impact Assessment: New Zealand Business Number, March 2014 (PPIA). The scope of the PPIA is limited to the introduction of the new unique identifier that will be assigned to businesses including sole traders, partnerships and trusts.⁷

¹ *Less Admin, More Business: A Government Discussion Document*, March 2014, at p6.

² PPIA, p10.

³ *Less Admin, More Business*, p24.

⁴ PPIA, p3. See also p20.

⁵ *Less Admin, More Business*, p29.

⁶ *Less Admin, More Business*, p26. See also PPIA, p17.

⁷ The privacy impacts of possible extensions of the NZBN – such as a possible new public register of businesses beyond those already managed by the Companies Office, or a cross-government registration system for businesses – are not covered by the PPIA: see PPIA, p2.

14. There is no reference in the documents to consultation with the Privacy Commissioner. With any Privacy Impact Assessment (preliminary or otherwise) we would have expected to see reference to consultation with the Commissioner and details given about how any issues raised by the Commissioner had been addressed. We look forward to seeing the Privacy Commissioner's comments on the proposal in due course.

Uncertain scope

15. As the PPIA notes, a number of crucial decisions about the scope of the proposal are yet to be made, including:⁸
- Which agency or agencies will be responsible for issuing NZBNs to individuals and managing the processes around the collective, storage, security, disclosure and retention/disposal of the personal information involved?
 - What governance structures will be in place if the responsibility for managing the NZBN and associated data is distributed across more than one agency?
 - Who will be responsible for providing individuals access to their personal information and meeting the obligations under Parts 4 and 5 of the Privacy Act?
 - What personal information will be required to be provided by individuals and what additional information will be permitted to be provided by individuals?
 - Whether the information that will be mandatorily made public is limited to the NZBN, BIC, and an indication of the general location of the business?
 - Whether government agencies that already have a relationship with the business will be automatically provided with primary business information from the NZBN data?

The privacy impacts and risks

16. The PPIA states that concerns around poorly regulated unique identifiers include unfettered use, facilitating identity crime, as well as "questionable reliability, vulnerability to falsification and error, and the potential for them to be used to propagate poor quality data across many information systems".⁹
17. The PPIA and discussion document reiterate that "the NZBN legislation will contain provisions to ensure that the NZBN is well-regulated" and that the legislation "will be designed to address the risks around the misuse of unique identifiers."¹⁰ Similarly, the PPIA states that new legislation to "relax" the Privacy Act requirements would limit the use of the NZBN and the associated personal information to "authorised purposes only", to "ensure that the NZBN is a well regulated identifier."¹¹ As discussed below, very limited information is provided about the exact nature of the proposed mitigation measures.
18. The PPIA goes on to note that:¹²
- Information Privacy Principle 12(2) – regulating the assignment and use of unique identifiers for individuals – would need to be overridden by the NZBN legislation, "while protecting against ... misuse, especially as a facilitator for identity crime";

⁸ PPIA, p23.

⁹ PPIA, p12.

¹⁰ PPIA, p11.

¹¹ PPIA, p12.

¹² PPIA, pp3-4.

- Personal information used for an evidence of identity process may be considered sensitive and if collected and kept, will need to be “appropriately protected”;
- “Decisions have not yet been finalised on what information will be collected for the purposes of assigning the NZBN or for facilitating an opt-in distribution of NZBN-related information ...”; and
- a “... key risk for privacy at this stage is that there is no information available about what governance structures will be put in place for the NZBN and its associated services”, noting that “proper management of personal information is highly dependent on proper governance and the development of a privacy friendly culture in the organisation responsible for the stewardship of personal information”.

19. The PPIA indicates that other statutes (such as the Tax Administration Act s 81, requiring Inland Revenue officers ‘to maintain secrecy’) may also need to be amended to permit NZBN information-sharing across government agencies, and that policy work is underway “to identify and address how other legislation may impact the NZBN system”.¹³

Mitigation measures

20. The PPIA states that there are “precedents that can be followed to ensure the NZBN is not misused.”¹⁴ These are: section 346 of the Education Act (defining offences and fines for misuse by authorised and unauthorised users of the National Student Number) and the Australian Business Number’s (unspecified) “protections” to prevent employers coercing staff to apply for the number.
21. The PPIA concludes that the privacy issues “should be able to be effectively managed through the mitigations detailed in this report”.¹⁵
22. These mitigations appear to be the two “precedents” noted in paragraph 20 above, the general statements that personal information will need to be “appropriately protected”, and recommendations as to monitoring and reporting to government on the use of the NZBN.¹⁶ These measures – along with the Privacy Commissioner’s ability to undertake own-motion investigations – are said to “provide a significant mitigation of the risk of the NZBN becoming a de facto universal unique identifier”. Nevertheless, the PPIA goes on to say that it might be useful to have additional clarity about how the Commissioner’s powers of investigation apply to the NZBN, given the proposed override of the Privacy Act (IPP12(2)).¹⁷
23. Notwithstanding the conclusion that there are adequate protections against the NZBN becoming a de facto unique identifier, the PPIA notes the undefined scope of the proposal and recommends that as this “complex multi-year undertaking” progresses, privacy risks should be reviewed and more specific mitigations proposed.¹⁸

¹³ PPIA, p16.

¹⁴ PPIA, p3.

¹⁵ PPIA, p22.

¹⁶ PPIA, p22 (recommendation 1).


¹⁷ PPIA, p22.

¹⁸ PPIA, p23.

Conclusion

24. These comments have been prepared by the Law Society's Human Rights and Privacy Committee. If you wish to discuss the comments, please contact the Committee secretary Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912 DDI) in the first instance.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line extending to the right.

Chris Moore
President