

30 September 2014

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

Email: nzbn@mbie.govt.nz

New Zealand Business Number – Exposure Draft Bill

The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the New Zealand Business Number (NZBN) exposure draft Bill (draft Bill).

The Bill sets out the details of allocating the NZBN beyond registered companies to all New Zealand business entities. As noted in the consultation material attached to the draft Bill, the NZBN is a 13-digit identifier which will allow businesses “to register and share their information and streamline dealings with government and other businesses”.

Brief comments from the Law Society’s Property Law Section are set out below.

1. The definition of “business” (cl 10(2)) is very broad. It includes “any undertaking ... whether for gain or reward or not”. In theory this could capture activities beyond the intended scope of the legislation, such as recreation, sports, volunteering or even domestic activities. This is of particular concern given the broad definition of “entity” in clause 6: this includes, “without limitation”, an individual, company, corporation sole, and a range of trusts, partnerships and societies, as well as things declared by regulations to be an entity for the purposes of the Act.

Although clause 10(2)(b) provides for regulations to declare that any undertaking is not to be defined as a business for the purposes of the Act, in the Law Society’s view the use of regulations to exclude very broad categories of common undertakings – such as recreation, sports, volunteering or domestic activities – would not reflect good law-making.

The Law Society recommends that the clause 10(2) definition should expressly exclude personal and domestic activities that are clearly beyond the intended scope of the legislation.

2. The draft Bill’s interaction with other statutes needs to be considered further. Other statutes (such as the Income Tax Act 2007 and GST legislation) have their own definitions around carrying on business and these should be taken into account when setting the definitions and scope of the NZBN legislation. Similarly, the ‘phoenix company’ provisions of the Companies Act 1993, which prescribe rules around the use of company names, should be considered.

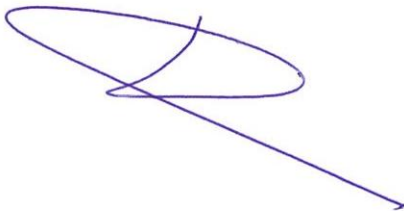
Attention should also be given to the rules relating to any change in control of an entity (such as where all shares in an entity are sold). This links to the need to ensure the integrity of the NZBN register, as discussed below.

3. The draft Bill requires businesses to provide information that is accurate at the time of registration, but does not place any obligation on businesses to maintain the accuracy of the information after registration. There is no requirement to update the information on the register, although businesses may do so voluntarily. One of the reasons for this is that it is thought that businesses will be motivated to maintain the information on the register and businesses which fail to do so for whatever reason will suffer reputational damage. The Law Society queries whether this should be reconsidered. The success of the register and the purpose of the Bill rely on the accuracy of the information on the register. If the information cannot be relied on, this could undermine the objectives of the Bill. One solution may be to extend clause 50, which makes it an offence for any person who in any document or information required under the Act makes any representation or omits any matter knowing that it is false or misleading. Clause 50 could also apply to information that remains on the register after the initial registration.

The Law Society's Human Rights & Privacy Committee has also examined the draft Bill and considers that the privacy concerns identified by the Law Society in the early policy stages¹ have been addressed and the draft Bill reflects a number of privacy enhancing responses (for example the approach to unique identifiers). In addition, the mandatory and optional information collected appears to address the issue of individuals needing to withhold information for personal protection while still needing a business number, by the ability to review content, in consultation with the Privacy Commissioner, if needed.

If you have any questions or wish to discuss these comments, please contact the Law Society's Law Reform Manager Vicky Stanbridge (ph 04 463 2912 ddi / vicky.stanbridge@lawsociety.org.nz).

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a long, thin tail extending downwards and to the right.

Mark Wilton
Vice President

¹ http://www.lawsociety.org.nz/_data/assets/pdf_file/0004/77719/New-Zealand-Business-Number-11-4-14.pdf