

New Zealand Business Number Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the New Zealand Business Number Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to reduce the time and money eligible entities spend on interacting with government. To achieve this, the bill would allow eligible New Zealand entities to obtain or be allocated a New Zealand Business Number (NZBN)—a unique identifier to be used for all interactions with government.

Eligible entities would also be registered on a New Zealand Business Number register that contains data on all registered entities. The bill would define the categories of data held on the register, and create rules for collecting, accessing, and sharing that data. These rules would include protections for personal and commercially confidential information.

Commencement date

We recommend amending the bill's commencement date in clause 2 to 28 days after Royal assent. This would provide more public notice about when the new regime would come into force and greater certainty for those implementing it.

We also recommend delaying commencement for unincorporated entities, to allow the Registrar of NZBNs time to prepare for allocating numbers to these entities.

Preliminary provisions

The bill focuses on improving the efficiency of interactions between government and eligible entities. However, the NZBN would also benefit eligible entities when they

interact with each other. We recommend inserting an additional purpose to this effect in clause 3.

We recommend removing the definition of “business” from clause 5 (the general interpretation clause) and defining it more fully in new clause 9(2). Because the definition of “business” in clause 5 only relates to its use in clauses 3, 9, and 35, including it in the general interpretation clause could cause confusion.

Privacy

We have thought carefully about the bill’s privacy implications. Under an NZBN system, entities would be assigned a unique identifier and have their primary business data included on a centralised register. This raises privacy sensitivities with the bill’s proposed application to unincorporated entities, many of whom are individuals (such as sole traders).

We are pleased that, in developing the bill, officials from the Ministry of Business, Innovation and Employment sought the views of the Privacy Commissioner to identify and control potential privacy intrusions. In addition, the Privacy Commissioner made a submission on the bill. We also invited the Government Chief Privacy Officer to make a submission on the bill’s privacy provisions. As a result, we are satisfied that the bill’s privacy safeguards are adequate.

Primary business data

The bill would divide primary business data held on the NZBN register into “public primary business data” (Schedule 3), which would automatically be publicly accessible, and “other primary business data” (new Schedule 3A), to which access would be restricted because of the potentially private information it contained. We recommend inserting new subclauses 20(4) and (5) to comprehensively set out what the register may contain, including consent requirements for certain types of primary business data.

We recommend inserting new clause 27(1) for clarification purposes. As introduced, clause 27(1) states that government agencies could only access primary business data if another enactment authorises them to collect such information. On its own, this might unintentionally imply that government agencies could not automatically access and use public primary business data, despite this presenting no privacy concerns.

We also recommend inserting new clause 27(1A)(b) to allow a government agency to access and use an NZBN entity’s private primary business data with consent. This amendment would offer more flexibility without affecting privacy protection.

Similarly, we recommend amending clause 27(2) so that only unincorporated entities would need to consent to a government agency providing their primary business data to the Registrar. Requiring government agencies to acquire consent to update the register each time a corporate or public entity updates their business information would create inefficiencies without any privacy gains.

Because entities are often known publicly by their trading name, rather than their legal entity name, we recommend amending Part 1 of Schedule 3 to add “trading name or names” to the list of public primary business data for corporate and public entities. We do not recommend extending this amendment to unincorporated entities because such information might identify individuals.

Delegated powers

We wrote to the Regulations Review Committee seeking their view on some provisions in the bill that appeared to contain Henry VIII clauses (clauses that delegate powers to alter an Act, which is a power that ordinarily only Parliament holds). In response to the advice received, we propose the following changes.

Delegated powers to identify or exclude eligible entities

Clauses 5(h) (definition of “entity”), 9(a)(iv), and 9(b)(ii) would allow delegated legislation to identify entities the bill would apply to; clause 12(c) would allow delegated legislation to declare an entity ineligible for an NZBN. Clause 37 is the empowering clause for these regulation-making powers.

These clauses seek to future-proof the bill should new entity types emerge after the bill’s enactment or to protect the NZBN from misuse for unintended purposes. We recommend tighter controls because regulations determining what the bill applies to could widen or narrow the proposed legislation’s scope beyond Parliament’s initial contemplation.

We recommend amending the empowering clause by inserting new subclause 37(2). This would require the Minister responsible for administering the Act, when recommending regulations, to consider how including or excluding particular entities would benefit the NZBN system, and, in the case of exclusion, how this would uphold the system’s integrity.

We also recommend deleting clause 9(b)(ii). The power it provides to declare an entity an unincorporated entity is unnecessary because the rest of clause 9 is broad enough to ensure flexibility. We recommend amending clause 12(c) to restrict declarations of ineligibility to entity types, rather than single entities.

The Regulations Review Committee asked whether the purpose of the bill would be to provide numbers to entities that are in business or to provide numbers to entities whether or not they are in business. We recommend amending subclauses 3(a) and (b), 5 (identifier), 23(4), and Schedule 3, and inserting subclause 35(3), to make it clear that the bill would relate to entities (as defined in clause 9) that are eligible under clauses 10 to 12 of the bill. We are satisfied that these changes would reinforce the purpose of the bill and therefore remove any potential doubt about the scope of its regulation-making powers.

Delegated powers to alter lists of primary business data

We recommend amending clauses 20(2)(b) and 22, which seek to delegate the power to alter the types of primary business data the NZBN register holds. Any such power

should be subject to transparent criteria because the data contained on the register is a core element of the NZBN system, with privacy implications. We believe the clauses as introduced are too broad; furthermore, having two clauses to achieve the same outcome is unnecessary.

We recommend removing clause 20(2)(b) entirely and incorporating draft regulations that would have been made under this clause as new Schedule 3A. We also recommend inserting new clause 22(2) to require the Minister, before recommending regulations, to consult the Privacy Commissioner and to consider the advantages and disadvantages of altering the lists of primary business data.

Delegated power to authorise an agency to require an entity's NZBN

The power to authorise a government agency to require an entity to register for, and provide, an NZBN would be delegated by clause 29. The clause intends to grant agencies flexibility to adopt the NZBN system at times most suitable to them.

However, given the element of compulsion and the privacy implications for entities, we recommend inserting new subclause 29(2). This would require the Minister, when recommending regulations, to consult the Privacy Commissioner. It would also require the Minister to consider the advantages and disadvantages of the authorisation for eligible entities and the potential effects on costs for the government agency.

Data transfer from IRD to Registrar

Schedule 1, clause 3 would allow the Inland Revenue Department (IRD) to transfer any primary business data it holds on eligible entities to the NZBN Registrar during a temporary transitional period. This would temporarily waive the requirement, under clause 27(2)(b), that a government agency acquire an unincorporated entity's consent before transferring its data. New clause 3(c) would make clear that the data transferred would form part of the contents of the register and continue to do so after the transitional period ends, as if consent had been granted.

Information Privacy Principle 2 (IPP 2) in the Privacy Act 1993 (which is linked to IPP 11) states that an agency shall collect personal information directly from the individual concerned unless that individual authorises collection of the information from someone else. Clause 27(2)(b) is consistent with this exception, but clause 3 of Schedule 1 is not.

We acknowledge that clause 3 of Schedule 1 would create an apparent disparity between the treatment of an unincorporated entity's data when transferred during the transitional period, and after. However we consider that the bill should be consistent with the principles of the Privacy Act to the extent that this is practicable. This test is met in relation to clause 27(2)(b). However, it is not met in relation to the transitional provision allowing the one-off transfer of bulk data by the IRD to the Registrar under clause 3 of Schedule 1. We agree, therefore, that the different treatment is appropriate.

Uptake of the NZBN

Overall, we support this bill. We agree that creating efficiencies in transactions between entities and between entities and government is worthwhile. We also believe that an NZBN register would be useful if it is user-friendly in a similar way to the Companies Register.

We note that the bill's efficacy will depend on government agencies' widespread adoption of the NZBN. Without this, the NZBN would be in danger of becoming "just another number", merely increasing businesses' overheads rather than minimising them.

We understand that forthcoming Government directives will address expectations about agency uptake of the NZBN. We expect this to happen in practice. We also urge the formulation of a clear timeline that details when each government service should adopt the NZBN.

New Zealand Labour Party minority view

Despite agreeing with the Government's stated desire to make businesses and other eligible entities' interaction with Government easier and cheaper, Labour does not believe the Government has put itself in a position to deliver on this promise. We are therefore only able to offer qualified support for the NZBN bill.

Labour is concerned that the Government has not outlined a clear plan for how this bill's stated purposes will be achieved, namely subclauses 3(a) and (b) "enable eligible entities in New Zealand to interact more easily with government" and "reduce transaction costs in New Zealand".

The committee was provided with no convincing reason why the existing IRD number should not be adopted as a universal number for interaction with government. Instead, a new and additional number is proposed.

The Labour Party shares the concern expressed by Federated Farmers that the initial list of government departments does not include agencies such as Worksafe NZ and Immigration NZ. They helpfully suggest swift extension of the number to local government, acknowledging that many businesses have more interaction with local government than central government.

We share the Chartered Accountants Australia and New Zealand's concern that "the benefits for business may be overstated" without prompt and broad integration by government agencies. They expressed concern that the mandate for recognition of the business number contained in the original section 34 had been removed, and note that the departmental Regulatory Impact Statement states that "without significant uptake there is a risk that the identifier is not integrated and utilised widely, and just becomes another number, rather than a replacement for the many current identifiers—as it intended".

Only a limited number of government departments have committed to the initial roll-out of the NZBN. Consequently in the only part of the plan outlined in detail to date, it is clear that businesses that deal with those departments will be required to obtain

another number—without achieving the benefits that would accrue from having one number for all of their central government interactions.

The addition of “yet another number” for businesses and other eligible entities’ dealings with public agencies stands in direct opposition to the stated purpose of the bill. Rather than making interactions with government more efficient, a greater cost is incurred in the short term. This could be tolerated by businesses if a long-term plan was in place to gather the benefits that should accrue from a well-implemented single number system. Unfortunately, although promised in general terms, the detail of such a plan has not been forthcoming.

Without a credible timeline in place for whole-of-government adoption of the NZBN, and a tangible accompanying commitment from Government to fund necessary IT infrastructure upgrades, the attempt is unlikely to succeed.

The failure of planning for the NZBN roll-out and an apparent reluctance to properly resource this central government programme will carry a cost—even if the NZBN is introduced over time. Slow implementation of the NZBN across government will carry a cost for businesses and other eligible entities forced to comply with multiple systems. Better to incur a little additional cost for government in order to release businesses from unnecessary compliance, and free them up for more productive activity.

Appendix

Committee process

The New Zealand Business Number Bill was referred to the committee on 5 May 2015. The closing date for submissions was 18 June 2015. We received and considered 14 submissions from interested groups and individuals. We heard five submissions, including the Privacy Commissioner.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in the bill.

Committee membership

Melissa Lee (Chairperson)

Kanwaljit Singh Bakshi

Ria Bond

Dr David Clark

Hon Judith Collins

Clare Curran

Kris Faafoi

Brett Hudson

Gareth Hughes

Simon O'Connor

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Steven Joyce

New Zealand Business Number Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Business Number Act **2015**.

2 Commencement

~~This Act comes into force on the day after the date on which it receives the Royal assent.~~ 5

- (1) This Act comes into force for all purposes, except the purposes referred to in **subsections (2) and (3)**, 28 days after the date on which it receives the Royal assent.
- (2) This Act comes into force for the purpose of applying to unincorporated entities on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for the purposes of the Act applying to different types of unincorporated entities. 10
- (3) If, in respect of 1 or more types of unincorporated entity, no order under **subsection (2)** appointing a date is made before 12 December 2016, the Act comes into force, for the purpose of applying to those unincorporated entities, on that date. 15

Part 1

Preliminary provisions

Purposes and overview 20

3 Main purposes

The main purposes of this Act are to—

- (a) enable ~~businesses~~ eligible entities in New Zealand to interact more easily with government; and

- (ab) enable eligible entities in New Zealand to interact more easily with one another; and
- (b) ~~reduce the costs of business transactions~~ transaction costs in New Zealand; and
- (c) ~~establish and maintain a New Zealand business number register~~ the New Zealand Business Number Register that will—
 - (i) enable an NZBN identifier to be allocated to ~~businesses in New Zealand~~ eligible entities; and
 - (ii) enable individuals dealing with ~~businesses~~ NZBN entities to use the NZBN identifier; and
 - (iii) enable ~~business~~ certain information to be collected and shared between authorised government agencies; and
 - (iv) make certain ~~business~~ information publicly available; and
- (d) protect the security and confidentiality of information provided under this Act and the privacy of individuals in business (within the meaning set out in **section 9(2)**).

4 Overview

In this Act,—

- (a) **Part 1** provides for preliminary matters, including the purposes of this Act, the application of this Act to the Crown, transitional provisions, and interpretation:
- (b) **Part 2** provides for—
 - (i) which entities are eligible for an NZBN, how entities obtain an NZBN, and registration of entities ~~on~~ in the New Zealand Business Number Register; and
 - (ii) the Registrar's obligations to keep and operate the register, information that may be contained in the register, and who may access that information; and
 - (iii) government agencies' powers to access information in the register, provide information to the register, and use and require the use of NZBNs; and
 - (iv) the appointment of the Registrar, the Registrar's functions and powers in relation to the register, and rights of appeal against decisions of the Registrar; and
 - (v) miscellaneous matters, including legal rights in relation to NZBNs, the power to amend **Schedule 3** (which sets out the information in the register that must be publicly available) and **Schedule 3A** (which sets out other information in the register that may be publicly available), regulation-making powers, offen-

ces, consequential amendments to other enactments, and related matters.

Interpretation

5 Interpretation

- In this Act, unless the context otherwise requires,— 5
- ~~business~~ has the same meaning as in section 2(1) of the Fair Trading Act 1986
- company** means a company registered under the Companies Act 1993
- corporate or public entity** has the meaning set out in **section 9(1)(a)**
- eligible entity** means an entity that is eligible for an NZBN under **section 10**
- entity** includes (without limitation),— 10
- (a) a company or an overseas company:
 - (b) any other body corporate:
 - (c) a corporation sole:
 - (d) a sole trader:
 - (e) a partnership (within the meaning of section 4(1) of the Partnership Act 15
1908), or association of persons, whether incorporated or not:
 - (f) in the case of a trust,—
 - (i) if the trust has only 1 trustee, the trustee acting in his, her, or its
capacity as trustee; and
 - (ii) if the trust has more than 1 trustee, the trustees acting jointly in 20
their capacity as trustees:
 - (g) a society, a branch of a society, or a credit union registered or deemed to
be registered under the Friendly Societies and Credit Unions Act 1982:
 - (h) a thing that regulations declare to be an entity for the purposes of this
Act, either generally or in specified circumstances 25
- ~~eligible entity~~ means an entity that is eligible for an NZBN under **section 10**
- government agency** means—
- (a) a Crown entity under section 7 of the Crown Entities Act 2004:
 - (b) a department under section 27A(1) and (2) of the State Sector Act 1988:
 - (c) the New Zealand Defence Force: 30
 - (d) the New Zealand Police:
 - (e) the New Zealand Security Intelligence Service:
 - (f) the Parliamentary Counsel Office:
 - (g) the Office of the Clerk of the House of Representatives:
 - (h) the Parliamentary Service 35

	identifier means any number, code, or name used to identify a business <u>an eligible entity</u>	
	Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act	5
	NZBN means New Zealand Business Number	
	NZBN entity means an entity that is registered in the register	
	<u>other primary business data</u> has the meaning given to it by section 20(2)(b)	
	overseas company means a body corporate that is incorporated outside New Zealand and is registered, or is deemed to be registered, under Part 18 of the Companies Act 1993	10
	primary business data has the meaning set out in section 20(2)	
	public primary business data , in relation to an NZBN entity, means the primary business data that must be publicly available under section 21	15
	register means the New Zealand Business Number Register established under section 18	
	Registrar means the person appointed as the Registrar of New Zealand Business Numbers under section 30	
	third party , in relation to an NZBN entity, means a person other than the NZBN entity or a government agency authorised under section 27(1A)	20
	unincorporated entity has the meaning set out in section 9(1)(b) .	
	<i>Other preliminary provisions</i>	
6	Status of examples	
(1)	An example used in this Act is illustrative of the provisions to which it relates. It does not limit those provisions.	25
(2)	If an example and a provision to which it relates are inconsistent, the provision prevails.	
7	Act binds the Crown	
	This Act binds the Crown.	30
8	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	
7	<u>Transitional, savings, and related provisions</u>	
	<u>The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.</u>	35

8 Act binds the Crown

This Act binds the Crown.

Part 2**Provisions concerning NZBNs, register, Registrar, and miscellaneous matters**

5

*Eligibility for NZBN***9 Meaning of corporate or public entity and unincorporated entity**

(1) In this Act,—

(a) **corporate or public entity** means—

- (i) an entity that is already on a public register listed in **Schedule 2:** 10
- (ii) a government agency:
- (iii) any other body corporate or a corporation sole:
- (iv) any other entity declared by regulations to be a corporate or public entity for the purposes of this Act; and

(b) **unincorporated entity** means an entity other than a corporate or public entity (for example, a sole trader, a partnership, or a trustee (or trustees acting jointly)) that is— in business in New Zealand. 15

(i) ~~in business (as defined in section 2(1) of the Fair Trading Act 1986) in New Zealand; or~~

(ii) ~~declared by regulations to be an unincorporated entity for the purposes of this Act.~~ 20

(2) In **subsection (1)(b), business** means any undertaking—

(a) that is carried on whether for gain or reward or not; or

(b) in the course of which either of the following occurs, whether free of charge or not: 25

(i) goods and services are acquired or supplied; or

(ii) any interest in land is acquired or disposed of.

Compare: 1986 No 121 s 2(1)

10 Entities eligible for NZBN

An entity is eligible for an NZBN if— 30

(a) it is a corporate or public entity or an unincorporated entity; and

(b) it does not already have an NZBN; and

(c) it is not ineligible for an NZBN under **section 11(2) or 12.**

11 Persons that are more than 1 entity: eligibility for NZBN

- (1) A person (natural or otherwise) that is more than 1 entity is eligible to be allocated an NZBN, and be registered on the register, in their or its capacity as each of those entities.
- (2) Despite **subsection (1)**, a person who is a sole trader is eligible to be allocated only 1 NZBN and be registered on the register only once as a sole trader. 5

12 Entities ineligible for NZBN

The following entities are ineligible for an NZBN:

- (a) an individual in his or her personal capacity (for example, as a consumer or an employee): 10

Example

Bill is a student. To help support himself, he runs his own lawn-mowing business and works 2 evenings each week at a petrol station.

Bill is not eligible for an NZBN in his personal capacity as an employee of the petrol station. However, Bill is eligible for an NZBN in his capacity as a sole trader in business. (In that capacity, he is an unincorporated entity under **section 9** and therefore meets the eligibility criteria in **section 10(a)**.) 15

- (b) an individual in his or her capacity as a member of an unincorporated entity that is eligible for an NZBN:

Example

Jane Brown and John Smith are partners in the law firm Brown, Smith, and Associates.

Brown, Smith, and Associates is an entity eligible for an NZBN because it is a partnership in business in New Zealand (and therefore is an unincorporated entity under **section 9**). 25

However, any legal services that Jane or John provides to clients are services provided by the partnership, Brown, Smith, and Associates, in the course of that entity carrying out its business undertaking, and neither Jane nor John, as an individual in the capacity of a member of the partnership, is an entity eligible for an NZBN in relation to those services (**paragraph (b)** of this section). 30

- (c) ~~an entity or~~ a type of entity that is declared by regulations to be ineligible for an NZBN.

Example 1

~~Bill is a student. To help support himself, he runs his own lawn-mowing business and works 2 evenings each week at a petrol station.~~ 35

~~Bill is not eligible for an NZBN in his personal capacity, as an employee of the petrol station. However, Bill is eligible for an NZBN in his capacity as a sole trader carrying on the lawn-mowing business. (In that capacity, he is an unincorporated entity under **section 9** and therefore meets the eligibility criteria in **section 10(a)**.)~~ 40

Example 2

Jane Brown and John Smith are partners in the law firm Brown, Smith, and Associates.

Brown, Smith, and Associates is an entity eligible for an NZBN because it is a partnership carrying on business in New Zealand (and therefore is an unincorporated entity under **section 9**).

However, any legal services that Jane or John provides to clients are services provided by the partnership, Brown, Smith, and Associates, in the course of that entity carrying out its business undertaking, and neither Jane nor John, as an individual in the capacity of a member of the partnership, is an entity eligible for an NZBN in relation to those services (**paragraph (b)** of this section).

*Applications for NZBN***13 Application for NZBN**

- (1) An entity that wants to be allocated an NZBN and be registered on the register may apply for an NZBN. 15
- (2) The application must—
 - (a) be made in the manner determined by the Registrar; and
 - (b) satisfy any other prescribed requirements.

14 Registrar's powers on application for NZBN 20

- (1) If an entity applies for an NZBN in accordance with **section 13**, the Registrar may—
 - (a) allocate an NZBN to that entity and register the entity; or
 - (b) decline to register the entity if the Registrar considers this necessary in order to—
 - (i) uphold the integrity of the NZBN and the register; or
 - (ii) give effect to the purposes of this Act. 25
- (2) The Registrar must decline to register the entity if the Registrar considers that it is not an eligible entity.
- (3) For the Registrar's powers to verify identities and information, exercisable at any time, including before or after exercising the powers in this section *see section 32*. 30

*Registration of entities***15 Registrar's power to register eligible entities without application**

The Registrar may allocate an NZBN to an entity and register the entity without the need for it to apply for an NZBN. 35

16 Process for registering entity

- (1) The Registrar registers an entity by—
- (a) recording the entity's NZBN and primary business data in the register; and
 - (b) making publicly available the entity's public primary business data in accordance with **section 21**. 5
- (2) As soon as practicable after registering an entity, the Registrar must notify the entity of the registration.

*Cancellation of registration***17 Registrar's power to cancel registration** 10

The Registrar may cancel the registration of an NZBN entity if the Registrar is satisfied that—

- (a) at the time the Registrar registered the NZBN entity it did not meet the eligibility criteria in **section 10**; or
- (b) the registration was made in error (for example, as a result of an administrative error); or 15
- (c) the cancellation is necessary or desirable in order to—
 - (i) uphold the integrity of the NZBN and the register; or
 - (ii) give effect to the purposes of this Act.

New Zealand Business Number Register 20**18 Registrar to keep register**

The Registrar must keep and operate a register, to be known as the New Zealand Business Number Register, in accordance with this Act and any regulations made under it.

19 Form of register 25

The register must be in electronic form and may also be kept in any other form that the Registrar thinks fit.

20 Contents of register

- (1) The register may contain only primary business data.
- (2) **Primary business data**, in relation to an NZBN entity, is— 30
- (a) the public primary business data listed in **Schedule 3** for that type of entity; and
 - (b) ~~data prescribed by regulations as primary business data for that type of entity.~~

- (b) the other primary business data listed in **Schedule 3A** for that type of entity.
- (3) The register must contain the primary business data referred to in **subsection (2)(a)** (as applicable) for every NZBN entity.
- (4) The register may contain any of the other primary business data listed in **Part 1 of Schedule 3A** in relation to a corporate or public entity if— 5
- (a) the entity elects to provide that information to the Registrar; or
- (b) a government agency provides that information to the Registrar under **section 27(2)(a)**; or
- (c) that information is already available on a public register. 10
- (5) The register may contain any of the other primary business data listed in **Part 2 of Schedule 3A** in relation to an unincorporated entity if—
- (a) the NZBN entity elects to provide that information to the Registrar; or
- (b) a government agency provides that information to the Registrar with the consent of the entity in accordance with **section 27(2)(b)**. 15

21 Public primary business data

The following primary business data contained in the register for an NZBN entity must be publicly available:

- (a) in the case of a corporate or public entity,—
- (i) the data listed in **Part 1 of Schedule 3**; and 20
- (ii) any data ~~prescribed by regulations~~ listed in **Part 1 of Schedule 3A** that the entity elects to make publicly available or that is otherwise available on a public register; and
- (b) in the case of an unincorporated entity,—
- (i) the data listed in **Part 2 of Schedule 3**; and 25
- (ii) any data ~~prescribed by regulations~~ listed in **Part 2 of Schedule 3A** that the entity elects to make publicly available.

22 Power to amend Schedules 3 and 3A

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister made ~~after consulting the Privacy Commissioner~~ in accordance with **subsection (2)**, amend **Schedule 3 or 3A** to add or delete any information or type of information. 30
- (2) The Minister must, before making a recommendation under **subsection (1)** to—
- (a) amend **Schedule 3**,— 35
- (i) consult the Privacy Commissioner and take into account any potential privacy effects of the amendment; and

- (ii) have regard to the advantages and disadvantages of the information or type of information being included in the NZBN register:
- (b) amend **Schedule 3A**, have regard to the advantages and disadvantages of the information or type of information being included in the register.
- 23 Updating register** 5
- (1) The Registrar must ensure that an NZBN entity may access the primary business data contained in the register for the entity for the purpose of checking the accuracy of that data.
- (2) The Registrar may, at the request of an NZBN entity, made in the manner determined by the Registrar, update the primary business data contained in the register for that entity. 10
- (3) The Registrar may update the primary business data contained in the register—
- (a) for a corporate or public entity; or
- (b) for an unincorporated entity, if that entity has consented, in the manner determined by the Registrar, to the Registrar exercising that power. 15
- (4) Despite **subsection (3)(b)**, the Registrar may, at any time, exercise the following powers in relation to any NZBN entity:
- (a) update the register to reflect the status of the NZBN entity (for example, ~~as an active or an inactive business~~ as active or inactive):
- (b) amend the register if the Registrar is satisfied that the register contains an error. 20
- Public and third party access to information in register*
- 24 Manner register to be kept and operated concerning access to information**
- (1) The Registrar must keep and operate the register in a manner that allows members of the public to access and search public primary business data only. 25
- (2) All other primary business data in the register must only be accessible to, and available for searching by, government agencies that are authorised in accordance with **section 27(1) and (1A)**.
- 25 Public access to information in register**
- (1) Public primary business data in the NZBN register must be available for access and searching by members of the public at all times, unless the Registrar suspends the operation of the register in accordance with **subsection (2)**. 30
- (2) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar thinks that it is not practical to provide access to the register. 35
- 26 Third party access to information in register**
- (1) The Registrar may—

- (a) release primary business data of an NZBN entity to a third party if the NZBN entity consents to that release; and
 - (b) release public primary business data, in bulk, to a third party; and
 - (c) release information to a third party (for example, for research or statistical purposes) if—
 - (i) that information is aggregate information derived from primary business data; and
 - (ii) it is released in a form that could not reasonably be expected to identify an individual NZBN entity.
- (2) A request by a third party to release public primary business data or information under **subsection (1)** must be made in the manner determined by the Registrar (if any). 10
- (3) The third party must pay the prescribed fee (if any).

Government agencies' powers relating to register and use of NZBNs

- 27 Government agencies may access and provide information** 15
- (1) ~~A government agency may access and use primary business data contained in the register for an NZBN entity if an enactment, other than this Act, authorises the agency to collect that information.~~
- (1) A government agency may access and use any public primary business data contained in the register for an NZBN entity. 20
- (1A) A government agency may access and use any other primary business data contained in the register for an NZBN entity if—
- (a) an enactment, other than this Act, authorises the agency to collect that information; or
 - (b) the NZBN entity has consented, in the manner determined by the Registrar, to the government agency accessing and using that other primary business data. 25
- (2) ~~A government agency may provide primary business data about an entity to the register if the entity has consented to that primary business data being provided to the register.~~ 30
- (2) A government agency may provide primary business data to the Registrar about—
- (a) a corporate or public entity; or
 - (b) an unincorporated entity, if that entity has consented, in the manner determined by the Registrar, to the government agency exercising that power. 35

28 Government agencies may use NZBN

A government agency may use the NZBN of an entity (including using it in addition to, or substitution for, any other identifier the government agency may use for that entity) if that use is in accordance with the purposes of this Act.

29 Government agencies may be empowered to require NZBN

5

(1) The Governor-General may, by Order in Council, on the recommendation of the Minister made ~~after the Minister has consulted the Privacy Commissioner in accordance with **subsection (2)**~~, make regulations authorising a government agency to require an eligible entity, or a class of eligible entity, to which the agency provides services to register for an NZBN and provide that NZBN to the agency.

10

(2) Before making a recommendation under **subsection (1)**, the Minister must—

(a) consult the Privacy Commissioner and take into account the potential privacy effects of the authorisation; and

(b) have regard to the following matters:

15

(i) the advantages and disadvantages, for eligible entities, of the authorisation; and

(ii) the potential effects of the authorisation on the government agency's costs.

Registrar of New Zealand Business Numbers

20

30 Registrar of New Zealand Business Numbers

There must be a Registrar of New Zealand Business Numbers, who must be appointed under the State Sector Act 1988.

31 Delegation of Registrar's duties and powers

(1) The Registrar may delegate in writing any of the Registrar's duties and powers under this Act, other than this power of delegation.

25

(2) A delegation may be made to—

(a) a specified person:

(b) persons of a specified class:

(c) the holder of a specified office.

30

(3) A delegation may be—

(a) general; or

(b) specific; or

(c) limited to performing a duty or exercising a power in relation to a particular activity or operation or class of activity or operation.

35

(4) A delegation—

- (a) does not affect or prevent the performance of a duty or the exercise of a power by the Registrar:
- (b) does not affect the responsibility of the Registrar for the actions of a person to whom a duty or power is delegated:
- (c) may be revoked by the Registrar in writing: 5
- (d) continues in force despite a change in the person holding office as Registrar:
- (e) is subject to any directions or conditions imposed by the Registrar.
- (5) A person to whom a duty or power has been delegated may perform the duty or exercise the power in the same manner and with the same effect as if the duty or power had been conferred directly on the person by this Act. 10
- (6) A person who purports to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the delegation.
- 32 Registrar's verification powers**
- (1) The Registrar may verify any information provided by, or the identity or authority of,— 15
- (a) an entity:
- (b) a principal of an entity:
- (c) an individual who applies for an NZBN on behalf of an entity:
- (d) an individual who purports to have authority to act on behalf of an entity in relation to any other matter under this Act. 20
- (2) The Registrar may require an individual or a principal to provide any documentation or other information (including, without limitation, photographic identification) that the Registrar considers necessary for the purposes of verifying information provided by, or the identity or authority of, that person or the relevant entity. 25
- (3) The Registrar may exercise the powers in this section at any time, whether before or after the Registrar has registered the relevant entity, allocated an NZBN to the entity, or received an application for an NZBN for the entity.
- (4) In this section, **principal** means, in relation to— 30
- (a) a company or an overseas company, a person occupying the position of a director of the company or overseas company, by whatever name called:
- (b) a partnership (other than a limited partnership), any partner:
- (c) a limited partnership, any general partner:
- (d) a charitable entity (within the meaning of the Charities Act 2005), an officer (within the meaning of that Act): 35

- (e) a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.

33 Registrar must notify reasons for certain decisions and appeal rights

If the Registrar makes any of the decisions referred to in **section 34(1) and (2)**, the Registrar must notify the entity or third party who made the request (as applicable) of the reasons for the Registrar's decision and of the right of appeal under **section 34**. 5

34 Appeals against decisions of Registrar

- (1) An entity may appeal to the High Court against a decision of the Registrar to— 10
- (a) decline to register the entity under **section 14(1)(b)**;
 - (b) cancel the entity's registration under **section 17**;
 - (c) update or amend the register under **section 23(3)(a) or (4)**.
- (2) A third party may appeal to the High Court against a decision of the Registrar to refuse to release primary business data or information under **section 26**. 15
- (3) An appeal under this section must be brought—
- (a) in accordance with the rules of court; and
 - (b) within—
 - (i) 20 working days after the decision appealed against is given; or
 - (ii) any further time the court allows on application made before or 20 after that period expires.

35 Privacy Commissioner may require Registrar to report

- (1) The Privacy Commissioner may require the Registrar to provide the Privacy Commissioner with a report on the operation of the register and the collection and handling of personal information in the register in order for the Privacy Commissioner to assess the effects that the register has on the privacy of individuals in business in New Zealand. 25
- (2) Before requiring a report under **subsection (1)**, the Privacy Commissioner must consult the Registrar on the terms of reference proposed for the report.
- (3) In **subsection (1)**, **business** has the same meaning as set out in **section 9(2)**. 30

Miscellaneous provisions

36 No legal or beneficial interest in NZBN

- (1) An NZBN entity does not have any legal or beneficial interest in the NZBN allocated to it, or in the entity's registration on the NZBN register, and may not claim any value (for example, goodwill) in the NZBN. 35

- (2) The NZBN allocated to an entity may not be transferred to, or vest by operation of law in, any other entity.

37 Regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister made in accordance with **subsection (2)**, make regulations for all or any of the following purposes: 5
- (a) declaring a thing to be, or in specified circumstances to be, an entity for the purposes of this Act:
 - (b) declaring an entity to be a corporate or public entity ~~or an unincorporated entity~~ for the purposes of this Act: 10
 - (c) ~~declaring an entity or~~ a type of entity to be ineligible for an NZBN:
 - (d) prescribing requirements for the purposes of **section 13(2)(b)**:
 - (e) ~~prescribing primary business data for a type of entity for the purposes of **section 20(2)(b)**~~:
 - (f) prescribing how notices and other information may or must be given to, or provided to, any person under this Act and other matters relating to that procedure (including when the information is treated as received, given, or provided, for the purposes of this Act and the regulations): 15
 - (g) prescribing periods of time for the purpose of giving notices or other information, or within which any matter or thing must be done: 20
 - (h) ~~specifying fees and charges payable—~~
 - (i) ~~for providing information to third parties under **section 26**~~:
 - (ii) ~~in respect of any other matter under this Act or the manner in which fees and charges may be calculated~~:
 - (h) specifying fees and charges payable, or the manner in which fees and charges payable may be calculated, for providing information to third parties under **section 26**: 25
 - (i) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Minister must, before making a recommendation in relation to— 30
- (a) **subsection (1)(a), (b), or (c)**, have regard to the advantages and disadvantages of enabling entities to readily ascertain their status for the purposes of this Act; and
 - (b) **subsection (1)(c)**, in addition to the requirement under **paragraph (a)**,— 35
 - (i) consult the Registrar; and
 - (ii) be satisfied that the declaration is necessary or desirable in order to uphold the integrity of the register.

- 38 Giving documents and doing other things in manner determined by Registrar**
- (1) If this Act requires a document or notification to be given to the Registrar, or a thing to be done in a manner determined by the Registrar, that document or notification may be given and that thing may be done in the manner specified by the Registrar, who, for example, may require notification by electronic means or may specify any of the following matters: 5
- (a) by whom, when, where, and how the thing must be done:
 - (b) what other information or documents must be provided with the thing:
 - (c) requirements with which information, evidence, or documents that are provided in connection with the thing must comply. 10
- (2) The Registrar may refuse to perform or exercise a function, duty, or power in relation to the document, notification, or other thing if **subclause subsection (1)** is not complied with.
- 39 Offence in relation to NZBN** 15
- (1) Every person commits an offence who, knowing a number to be a false NZBN, without reasonable excuse—
- (a) uses, deals with, or acts upon it as if it were genuine; or
 - (b) causes another person to use, deal with, or act upon it as if it were genuine. 20
- (2) In **subsection (1)**, false NZBN means—
- (a) a number that is not an NZBN; or
 - (b) an NZBN that relates to another entity.
- (3) Every person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$250,000. 25
- 40 False or misleading statements**
- (1) Every person commits an offence who—
- (a) makes or gives, or authorises the making or giving of, a statement, document, or other information to the Registrar that is false or misleading in a material particular knowing it to be false or misleading; or 30
 - (b) omits, or authorises the omission of, from a statement, document, or other information made or given to the Registrar any information or matter knowing that the omission makes the statement, document, or other information false or misleading in a material particular.
- (2) Every person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000. 35

41 Consequential amendments

Amend the enactments specified in **Schedule 4** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 8-7

*Transitional provision relating to principal Act:
NZBNs allocated before commencement of Act* 5

1 ~~NZBNs deemed to have been issued under Act~~

~~If a corporate or public entity has been allocated an NZBN before the commencement of this Act, the NZBN is deemed to have been allocated under this Act.~~

Part 1 10

Provisions relating to principal Act as enacted

1 Interpretation

In this Part,—

Act means the principal Act, as enacted

transitional period means the period beginning 28 days after the date on which this Act receives the Royal assent and ending on the date on which the Act comes into force for the purpose of applying to all unincorporated entities in accordance with **section 2(2) and (3)**. 15

2 NZBNs treated as having been issued under Act

If a corporate or public entity has been allocated an NZBN before the commencement of this Act, the NZBN is treated as having been allocated under this Act. 20

3 Transitional provision for Inland Revenue Department providing primary business data to Registrar

During the transitional period,— 25

(a) **section 20(5)(b)** (which relates to other primary business data that the register may contain in relation to an unincorporated entity) applies to the Inland Revenue Department and an unincorporated entity as if the words “with the consent of the entity in accordance with **section 27(2)(b)**” were deleted; and 30

(b) **section 27(2)** (which relates to government agencies providing primary business data to the Registrar) applies to the Inland Revenue Department and an unincorporated entity as if, in **section 27(2)(b)**, the words “, if that entity has consented, in the manner determined by the Registrar, to the government agency exercising that power” were deleted. 35

4 **Status of primary business data provided under clause 3**

Primary business data that the Inland Revenue Department provides to the Registrar under **clause 3** forms part of the contents of the register in relation to the relevant unincorporated entity (and continues to form part of those contents despite the ending of the transitional period) as if the Inland Revenue Department had provided the primary business data with the consent of that entity.

5

Schedule 2

Public register entities

	s 9
Building societies incorporated under the Building Societies Act 1965	
Charitable trusts incorporated under the Charitable Trusts Act 1957	5
Companies registered under the Companies Act 1993	
Overseas companies registered under Part 18 of the Companies Act 1993	
Limited partnerships registered under the Limited Partnerships Act 2008	
Overseas limited partnerships registered under the Limited Partnerships Act 2008	
Friendly societies, branches of friendly societies, and credit unions registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982	10
Incorporated societies registered under the Incorporated Societies Act 1908 and branches of registered incorporated societies registered under the Incorporated Societies Amendment Act 1920	
Industrial and provident societies registered in accordance with section 4 of the Industrial and Provident Societies Act 1908 and section 33 of the Statutes Amendment Act 1939	15

Schedule 3
Public primary business data

ss 20(2)(a), 21, 22

Part 1

Public primary business data for corporate and public entities 5

Legal entity name

Trading name or names

Registered address

Location identifier

NZBN 10

Start date

Kind of entity

~~Business status (eg, active or inactive)~~ Status

Part 2

Public primary business data for unincorporated entities 15

Location identifier

NZBN

Start date

Kind of entity

~~Business status (eg, active or inactive)~~ Status 20

Schedule 3A
Other primary business data

ss 21, 22

Part 1

Other primary business data for corporate and public entities 5

<u>Industry classification</u>	
<u>GST status</u>	
<u>GST effective date</u>	
<u>Postal address</u>	
<u>Physical address</u>	10
<u>Principal place of activity</u>	
<u>Director(s)</u>	
<u>Website</u>	
<u>Phone number</u>	
<u>Email</u>	15
<u>Other address(es)</u>	
<u>Australian Business Number</u>	
<u>Australian Company Number</u>	
<u>Australian service address</u>	
<u>Owner</u>	20

Part 2

Other primary business data for unincorporated entities

<u>Legal entity name</u>	
<u>Industry classification</u>	
<u>GST status</u>	25
<u>GST effective date</u>	
<u>Registered address</u>	
<u>Postal address</u>	
<u>Physical address</u>	
<u>Principal place of activity</u>	30
<u>Director(s)</u>	
<u>Website</u>	
<u>Trading name(s)</u>	

Phone number

Email

Other address(es)

Australian Business Number

Australian Company Number

5

Australian service address

Owner

Schedule 4 Consequential amendments

s 41

Part 1 Acts amended

5

Companies Act 1993 (1993 No 105)

After section 360B, insert:

360C Alteration of entries on New Zealand register and overseas register without application

- (1) This section applies if — 10
- (a) a company has provided information about the company to the Registrar in addition to the information the company is compelled to provide under this Act or regulations made under it (regardless of whether the information was provided before or after the commencement of this section or is visible to the public on the New Zealand register); and 15
 - (b) that information is updated in the New Zealand Business Number Register.
- (2) The Registrar may update the information provided and, if applicable, the New Zealand register, so that the information is consistent with the information in the New Zealand Business Number Register. 20

After section 370, insert:

~~**370A Access to companies' primary business data on New Zealand Business Number Register**~~

- (1) ~~The Registrar may, in the exercise or performance of the Registrar's functions, powers, or duties under this Act, access and use any primary business data entered on the New Zealand Business Number Register for a company or overseas company, except the following:~~ 25
- ~~(a) location identifier;~~
 - ~~(b) GST status;~~
 - ~~(c) GST effective date.~~ 30
- (2) ~~Despite **subsection (1)**, the Registrar may access and use the data referred to in **subsection (1)(a) to (c)** if that information is publicly available on the New Zealand Business Number Register.~~

Designs Act 1953 (1953 No 65)

After section 29, insert:

35

Designs Act 1953 (1953 No 65)—continued**29A Power of Commissioner to alter certain inconsistent information**

- (1) This section applies if information in the register of designs relating to a person is inconsistent with primary business data relating to that person in the New Zealand Business Number Register.
- (2) If this section applies, the Commissioner may, in the prescribed manner (if any), alter the information in the register of designs so that it is consistent with the primary business data in the New Zealand Business Number Register. 5
- (3) In this section, **primary business data** has the same meaning as in **section 20(2)** of the New Zealand Business Number Act **2015**.

After section 46(2)(e), insert: 10

- (ea) for regulating the manner in which the Commissioner may alter information in the register of designs under **section 29A**, including prescribing procedures, requirements, and other matters in respect of an alteration:

Patents Act 2013 (2013 No 68)

After section 202, insert: 15

202A Commissioner may alter certain inconsistent information

- (1) This section applies if information in the patents register relating to a person is inconsistent with primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Commissioner may, in the prescribed manner (if any), alter the information in the patents register so that it is consistent with the primary business data in the New Zealand Business Number Register. 20
- (3) In this section, **primary business data** has the same meaning as in **section 20(2)** of the New Zealand Business Number Act **2015**.

After section 243(1)(m), insert: 25

- (ma) regulating the manner in which the Commissioner may alter information in the patents register under **section 202A**, including prescribing procedures, requirements, and other matters in respect of an alteration:

Tax Administration Act (1994 No 166)

In section 3(1), definition of **authorised officer**, after paragraph (d), insert: 30

- (e) is defined in **section 81(8)(aa)** for the purposes of **section 81(4)(v)**:
- (f) is defined in **section 82AA(3)** for the purposes of that section

After section 81(4)(u), insert:

- (v) communicating to the Registrar of New Zealand Business Numbers, for the purposes of the New Zealand Business Number Act **2015**, informa- 35

Tax Administration Act (1994 No 166)—*continued*

tion that is primary business data (as that term is defined in that Act) for inclusion in the New Zealand Business Number Register.

- (v) communicating to a person who is an authorised officer of the department for the time being responsible for the New Zealand Business Number Act 2015 any information that is—
- (i) primary business data (as defined in **section 20(2)** of the New Zealand Business Number Act 2015) for inclusion in the New Zealand Business Number Register; or
- (ii) communicated for the purposes of **section 82AA**.

In section 81(8), after “In this section,—”, insert:

- (aa) in **subsection (4)(v), authorised officer**, in relation to the responsible department, means any officer, employee, or agent of that department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section:

After section 82, insert:

82AA Disclosure to ensure correct information included in New Zealand Business Number Register

- (1) This section authorises the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the New Zealand Business Number Act 2015 to ensure that the correct primary business data (as defined in **section 20(2)** of the New Zealand Business Number Act 2015) for businesses and New Zealand Business Numbers is provided for inclusion in the New Zealand Business Number Register.
- (2) For the purposes of **subsection (1)**, the Commissioner may supply an authorised officer of the department for the time being responsible for the administration of the New Zealand Business Number Act 2015 information concerning primary business data to verify the correctness of the information to be included in the New Zealand Business Number Register.
- (3) In this section, **authorised officer**, in relation to the responsible department, means any officer, employee, or agent of that department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section.

Trade Marks Act 2002 (2002 No 49)

After section 78(e)(iii), insert as subclauses (2) and (3):

- (2) The Commissioner may alter a trade mark owner’s name or address entered in the register so that the entry is the same as the name or address appearing in the New Zealand Business Number Register for that person.

Trade Marks Act 2002 (2002 No 49)—*continued*

- (3) **Subsection (2)** applies—
- (a) ~~even if an agent of the trade mark owner provided the information appearing in the New Zealand Business Number Register and that person is not duly authorised to act as the trade mark owner’s agent for the purposes of providing such information under this Act; and~~
- (b) ~~in addition to the Commissioner’s power under subsection (1)(a).~~

5

After section 78, insert:

78A Alteration of register concerning certain inconsistent information

- (1) This section applies if information in the register relating to a person is inconsistent with primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Commissioner may, in the prescribed manner (if any), alter the information in the register so that it is consistent with the primary business data in the New Zealand Business Number Register.
- (3) In this section, **primary business data** has the same meaning as in **section 20(2)** of the New Zealand Business Number Act 2015.

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After section 199(1)(g), insert:

- (ga) prescribing the manner in which the Commissioner may alter the register under **section 78A**, including prescribing procedures, requirements, and other matters in respect of an alteration:

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Part 2 Regulations amended

Designs Regulations 1954 (SR 154/224)

After regulation 49, insert:

49A Alteration of entries without application

25

- (1) ~~The Commissioner may alter the name, address, or address for service entered in the register for a registered proprietor so that the entry is the same as the name, address, or address for service appearing in the New Zealand Business Number Register for that person.~~
- (2) **Subclause (1)** applies—
- (a) ~~even if an agent of the registered proprietor provided the information appearing in the New Zealand Business Number Register and that person is not duly authorised to act as the registered proprietor’s agent for the purposes of providing such information under the Act or these regulations; and~~

30

35

Designs Regulations 1954 (SR 154/224)—*continued*

- (b) in addition to the Commissioner's power to alter the register on an application under regulation 49.

Patents Regulations 2014 (SR 2014/275)

After regulation 36(1), insert:

- (1A) Subclause (1) does not apply if the new address for service appears in the New Zealand Business Number Register for that person. 5

After regulation 134, insert:

134A Commissioner may alter entries on patents register without request

- (1) The Commissioner may alter the name, principal place of business, address, or address for service entered in the register for a patentee so that the entry is the same as the name, address, or address for service appearing in the New Zealand Business Number Register for that person. 10
- (2) **Subclause (1)** applies—
- (a) even if an agent of the patentee provided the information appearing in the New Zealand Business Number Register and that person is not duly authorised to act as the patentee's agent for the purposes of providing such information under the Act or these regulations; and 15
- (b) in addition to the Commissioner's power to alter the register on a request under regulation 134.

Legislative history

31 March 2015
5 May 2015

Introduction (Bill 15-1)
First reading and referral to Commerce Committee