

# **New Zealand Business Number Funding (Validation and Authorisation) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

A small portion of fee money collected from companies under the Companies Act 1993 has been used to fund the New Zealand Business Number register (the **NZBN register**) established under the New Zealand Business Number Act 2016 (the **NZBN Act**). However, the Companies Act 1993 does not provide for fees collected under that Act to be used for purposes that are not related to that Act.

This Bill validates the imposition and collection of fees under the Companies Act 1993 and the use of the fees to fund the NZBN register and provides for future funding. In particular, the Bill—

- retrospectively validates the imposition, collection, and use, for NZBN register and related functions, of fees prescribed and collected under the Companies Act 1993;
- amends the Companies Act 1993 to provide that regulations under that Act may authorise fees collected under that Act to be used to fund the NZBN register and related functions (and amends the Companies Act 1993 Regulations 1994 accordingly);
- amends the NZBN Act to insert a regulation-making power that will enable the NZBN register and related functions to be funded from fees, charges, or levies payable by entities that have been allocated a New Zealand Business Number.

The amendments to the Companies Act 1993 and to the Companies Act 1993 Regulations 1994 that authorise fees collected under the Companies Act 1993 to be used to fund the NZBN register and related functions are intended as an interim measure and will expire on 1 July 2023. The intention is that, from that date, the NZBN register and related functions will be funded from fees, charges, or levies imposed by regulations made under the NZBN Act.

The Bill is an omnibus Bill introduced in accordance with Standing Order 263(a), because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

### Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=140>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to Companies Act 1993

*Clause 3* provides that *Part 1* amends the Companies Act 1993.

*Clause 4* amends section 372 of the Companies Act 1993.

The amendments to section 372(1)(a) and (2) set out in *clause 4(1) and (2)* are not substantive. They align the existing language of section 372 with the language of the new subsections of section 372 that are inserted by *clause 4(3)*.

*New subsections (3C) and (3D)*, inserted by *clause 4(3)*, enable regulations to be made that authorise fees paid under the Companies Act 1993 to be used to recover the costs of the Registrar of New Zealand Business Numbers under the NZBN Act.

*New subsection (3E)*, inserted by *clause 4(3)*, repeals *new subsections (3C) and (3D)* on 1 July 2023 with the effect that the practice of using fees paid under the Companies Act 1993 to recover the costs of the Registrar of New Zealand Business Numbers under the NZBN Act will not be authorised from 1 July 2023.

*Clause 5* inserts *new section 402* into the Companies Act 1993. *New section 402* validates the practice of using fees paid under the Companies Act 1993 to recover the costs of the Registrar of New Zealand Business Numbers under the NZBN Act. It only validates the practice in relation to fees payable or purportedly payable on or before 30 June 2019.

*Clause 6* inserts a provision into the Companies Act 1993 Regulations 1994 that, further to *new section 372(3C)* of the Companies Act 1993, authorises the use of a portion of any fee imposed under those regulations to be used to recover the costs of the Registrar of New Zealand Business Numbers under the NZBN Act.

## Part 2

### Amendments to New Zealand Business Number Act 2016

*Clause 7* provides that this Part amends the NZBN Act.

*Clause 8* removes an aspect of the regulation-making power contained in section 37(1) of the NZBN Act. That aspect of the regulation-making power, which provided for fees to be imposed in certain circumstances, is superseded by *new sections 37A to 37C*.

*Clause 9* inserts *new sections 37A to 37C* into the NZBN Act. Those sections allow for regulations to be made that prescribe fees or charges or impose levies under the NZBN Act. Before recommending the making of fee, charge, or levy regulations, the Minister must consult representatives of those entities that will be required to pay the fee, charge, or levy and anyone else who the Minister believes to be significantly affected by the proposed regulations.



*Hon Stuart Nash*

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the New Zealand Business Number Funding (Validation and Authorisation) Act **2019**.

**2 Commencement**

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

**Part 1****Amendments to Companies Act 1993****3 Amendments to Companies Act 1993**

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This Part amends the Companies Act 1993.

**4 Section 372 amended (Fees)**

(1) In section 372(1)(a), replace “the performance of functions and the exercise of powers under this Act” with “the performance or exercise of the Registrar’s functions, powers, and duties under this Act”.

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(2) In section 372(2), replace “perform a function or exercise a power” with “perform or exercise a function, power, or duty”.

(3) After section 372(3B), insert:

(3C) Regulations made under this section may authorise a fee, or a portion of a fee, payable under this section to be used to recover the costs, or a share of the costs, of the Registrar of New Zealand Business Numbers in the performance or exercise of the Registrar’s functions, powers, and duties under the New Zealand Business Number Act 2016.

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(3D) The costs recovered in accordance with **subsection (3C)**, and the functions, powers, and duties in relation to which those costs were incurred, need not be related, directly or indirectly, to the company or companies from which the fee is collected.

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(3E) **Subsections (3C) and (3D)** and this subsection are repealed on 1 July 2023.

**5 New section 402 inserted (Validation of fee used to recover costs of Registrar of New Zealand Business Numbers)**

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After section 401, insert:

**402 Validation of fee used to recover costs of Registrar of New Zealand Business Numbers**

(1) This section applies to a fee—

- (a) payable or purportedly payable on or before 30 June 2019 in accordance with the Companies Act 1993 Regulations 1994; but
- (b) that was (or is or will be) used (in whole or in part) to recover the costs, or a share of the costs, of the Registrar of New Zealand Business Numbers in the performance or exercise of a function, power, or duty conferred by or under the New Zealand Business Number Act 2016. 5
- (2) The fee is and always has been validly imposed by regulations made under section 372.
- (3) Money received by the Registrar of Companies in payment of the fee is and always has been lawfully collected and applied. 10

**6 Amendment to Companies Act 1993 Regulations 1994**

- (1) This section amends the Companies Act 1993 Regulations 1994.
- (2) After regulation 5(2), insert:
- (2A) A portion of any fee set out in Schedule 2 may be used to recover the costs, or a share of the costs, of the Registrar of New Zealand Business Numbers in the performance or exercise of the Registrar’s functions, powers, and duties under the New Zealand Business Number Act 2016. 15
- (2B) **Subclause (2A)** and this subclause are revoked on 1 July 2023.

**Part 2**

**Amendments to New Zealand Business Number Act 2016** 20

**7 Amendments to New Zealand Business Number Act 2016**

This Part amends the New Zealand Business Number Act 2016.

**8 Section 37 amended (Regulations)**

Repeal section 37(1)(g).

**9 New sections 37A to 37C inserted** 25

After section 37, insert:

**37A Regulations relating to fees and charges**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees and charges that the Registrar may require to be paid to the Registrar (or the rate at which, or the method by which, fees and charges are to be calculated) in connection with the performance or exercise by the Registrar of any function, power, or duty conferred by or under this Act. 30
- (2) The regulations may—
  - (a) prescribe the method of payment of a fee or charge; and 35

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| (b)                                     | authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee or charge in relation to any person or class of persons.   |    |
| (3)                                     | The Registrar may refuse to perform or exercise a function, power, or duty until the prescribed fee or charge is paid.  | 5  |
| (4)                                     | Any fee or charge payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar.   |    |
| <b>37B Regulations relating to levy</b> |   |    |
| (1)                                     | Every NZBN entity, or every NZBN entity that is included in a prescribed class of NZBN entities, must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.                              | 10 |
| (2)                                     | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.  |    |
| (3)                                     | Levies must be prescribed on the basis that the following costs should be met fully out of the levies:  | 15 |
| (a)                                     | a portion of the costs of the Registrar in performing or exercising the Registrar's functions, powers, and duties under this Act, where the size of the portion to be met by levies under this Act is determined by the Minister; and |    |
| (b)                                     | the costs of collecting the levy money.   | 20 |
| (4)                                     | Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.      |    |
| (5)                                     | The regulations may—  |    |
| (a)                                     | specify the class or classes of NZBN entities that are required to pay a levy:  | 25 |
| (b)                                     | specify the amount of levies, or method of calculating or ascertaining the amount of levies:  |    |
| (c)                                     | include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:   | 30 |
| (d)                                     | refund, or provide for refunds of, any over-recovery of the actual costs:   |    |
| (e)                                     | provide for the payment and collection of levies:   |    |
| (f)                                     | provide different levies for different classes of NZBN entity:  |    |
| (g)                                     | specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:                | 35 |
| (h)                                     | require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:   |    |



- (i) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.
- (6) If an entity is in 2 or more classes of NZBN entities in respect of which different levies have been prescribed, the entity must pay each of those levies (unless the regulations provide otherwise). 5
- (7) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Registrar, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.  
Compare: 2011 No 5 s 68
- 37C Minister must consult about fee, charge, or levy regulations** 10
- (1) Before recommending the making of regulations under **section 37A or 37B**, the Minister must consult—
- (a) the persons that the Minister considers are able to represent the views of the NZBN entities that will be liable to pay a fee, charge, or levy under the proposed regulations; and 15
- (b) any other representatives of persons who the Minister believes will be significantly affected by the proposed regulations.
- (2) Regulations made under **section 37A or 37B** are not invalid on the grounds that—
- (a) **subsection (1)** was not complied with before the Minister recommended the making of the regulations; or 20
- (b) the consultation carried out was about a specific rate or amount of a fee, charge, or levy that differs from the rate or amount set in the regulations.