

Departmental Disclosure Statement

Companies Office Registers Funding Validation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17 May 2022

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Part One: General Policy Statement

This Bill is an omnibus Bill that will amend 13 different Acts to retrospectively validate fees that have been collected under those 13 Acts that have been or will be applied under any register administered by the New Zealand Companies Office. The Bill amends the 13 following Acts:

- Auditor Regulation Act 2011:
- Building Societies Act 1965:
- Companies Act 1993:
- Financial Markets Conduct Act 2013:
- Financial Reporting Act 1993 (as preserved in part for certain purposes):
- Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- Friendly Societies and Credit Unions Act 1982:
- Incorporated Societies Act 1908:
- Insolvency Practitioners Act 2019:
- Limited Partnerships Act 2008:
- Personal Property Securities Act 1999:
- Retirement Villages Act 2003:
- Securities Act 1978 (as preserved in part for certain purposes).

The New Zealand Companies Office, a business unit of the Ministry of Business, Innovation and Employment (MBIE), administers the corporate registry system. There are 16 different registers including entity registers (eg. the Companies Register), occupational licensing registers (eg. the Insolvency Practitioners Register), and disclosure registers (eg. the Personal Property Securities Register). The Companies Office also supports other statutory functions of the various registrars responsible for these registers.

Each register was established under separate legislation. The legislation requires each register to be independently funded from fees charged to the users of the relevant register. This funding model was predicated on each register being operated separately.

Over time the Companies Office has moved towards providing shared services to the registers. A unified approach to the registers has allowed the Companies Office to—

- establish an organisational structure and operating model that produces economies of scale in the delivery of registry services; and
- leverage technological developments enabling registry services to be centralised and shared across registers.

These changes have contributed to reduced cost to users. However, it has also made it increasingly difficult to distinguish between the cost of providing services for each register.

In addition, the fees charged on some smaller registers have not kept up with the costs of operating them. This shortfall has been met from surpluses that have been generated from fees collected under legislation governing other registers. This practice is not authorised by the legislation.

This Bill addresses the Companies Office practice of applying funds collected in fees in a way not authorised by legislation by retrospectively validating the Companies Office's charging and expenditure practices.

The Bill will also enable the Companies Office to use the surpluses it has collected to fund anticipated shortfalls on certain registers while a new, unified funding regime is established.

The Bill forms a package with the Companies (Levies) Amendment Bill, yet to be introduced, which lays out the legislative framework for the new funding system.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Title: Regulatory Impact Statement: Funding of Companies Office Functions Authoring Agency: Ministry of Business, Innovation and Employment Date: 3 November 2021 A copy of this will be available on the Ministry of Business, Innovation and Employment's website after 19 May 2022.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory Impact Statement was reviewed by an internal panel at the Ministry of Business, Innovation and Employment. This did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Information on the size of the potential costs and benefits can be found in the Regulatory Impact Statement.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No steps were taken. The Bill relates to the collection and internal use of fees for the registering and administration of entities.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Business, Innovation and Employment undertook internal consideration to determine that the Bill is consistent with the principles of the Treaty of Waitangi.

Officials are aware that some entities using the Companies Office are Māori entities. However, as the impact of this Bill on individual entities is negligible, it was not considered necessary to take further steps to consider the particular impacts on Māori entities.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

NO

The policy proposals and the Bill have not been publicly consulted on due to the sensitive nature of the issues the Bill seeks to address.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill will retrospectively validate the imposition, collection, and use of fees collected prior to 31 July 2022 under any of the 13 Acts amended by the Bill, used to fund corporate registry services under any other Act that establishes a register administered by the Companies Office.</p> <p>The Bill retrospectively validates any fees collected under the 13 Acts and spent down across any registers administered by the Companies Office prior to the passage of the Bill, and will also enable money collected in fees prior to 31 July 2022 to be spent down to fund any of the registers administered by the Companies Office after Royal assent. This is necessary to provide a lawful basis for funding anticipated shortfalls while reforms in the Companies Levies Amendment Bill are implemented.</p> <p>The validation of the charging practice is undertaken in good faith to support corporate registry services that benefit all users, including not-for-profit entities such as Incorporated Societies. It has caused negligible disadvantage to users who have been over-charged.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO