



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021	<b>Date to be published</b>	12 May 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
25 March 2021	<i>Cabinet paper: Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021</i>	<i>Office of the Minister for Workplace Relations and Safety</i>
25 March 2021	<i>Cabinet minute: LEG-21-MIN-0031</i>	<i>Cabinet Office</i>
18 March 2021	<i>Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021</i>	<i>Parliamentary Counsel Office</i>

### Information redacted

### YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for Workplace Relations and Safety  
Chair, Cabinet Legislation Committee

## **Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021.

### **Policy**

- 2 Part 6A of the Employment Relations Act (the Act) provides additional protections in restructuring situations for specified categories of employees who are listed in Schedule 1A of the Act. These restructuring situations include 'contracting out', 'contracting in' and 'subsequent contracting'.
- 3 The additional protections that Part 6A provides for specified employees in Schedule 1A include:
  - The right for employees to transfer to a new employer where, because of proposed restructuring (including contracting in, contracting out, or subsequent contracting), their work is to be performed by another person.
  - If employees elect to transfer to the new employer, their terms and conditions of employment are transferred, and the new employer must recognise their entitlements to sick leave, annual holidays and their continuous service is unbroken.
- 4 Part 6A also includes a system for prospective employers to request information relating to the transfer of employees from the current employer, including the number of employees eligible to transfer, wages, work hours, etc.
- 5 In July 2019, the former Minister received an application from the union E tū to add security officers to Schedule 1A of the Act. I am satisfied that the application meets the statutory criteria in section 237A of the Employment Relations Act, and in November 2020 received Cabinet approval to add security officers to Schedule 1A [CBC-20-MIN-0071]. This will benefit the approximately 7,800 security officers in New Zealand.
- 6 This Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021 adds services in the security sector to Schedule 1A of

the Act, which would apply the additional employment protections in Part 6A to them.

- 7 The Order will amend Schedule 1A to include services in the security sector that involve one or more of the following in any workplace:
- guarding real or personal property belonging to another person
  - monitoring in real time, from any part of a premises, images from a camera or similar device on the same premises
  - services provided by a crowd controller employee
  - escort duty and courtroom custodial duty
  - mobile security patrols, and
  - collecting cash from any premises
- 8 The Order also includes a number of exceptions where groups of related employees do not meet the statutory criteria, including private investigators, security consultants, court security officers, Corrections officers, and Police employees.

### **Timing and 28-day rule**

- 9 The Order will commence on 1 July 2021. The three-month delay in commencement will give the security industry sufficient time to understand and comply with the new regulation.
- 10 The Order will not apply to any restructuring situation where an agreement has been entered into prior to the commencement date, even if the restructuring takes effect after the commencement date. The exception to this rule is a 'contracting in' situation, where the Order specifies that where an existing contractual agreement expires or is terminated before 23 August 2021 the changes will not apply.

### **Compliance**

- 11 The Order complies with each of the following:
- 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 11.3 the principles and guidelines set out in the Privacy Act 1993;
  - 11.4 relevant international standards and obligations;
  - 11.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

- 12 Under section 237A(5) of the Employment Relations Act I may only recommend the Governor General makes an Order in Council adding to the schedule of specified categories of employees if I have:
- received a request to add, amend, or delete a category of employees from a person or an organisation that—
    - clearly identifies the category of employees to which the request relates; and
    - specifies the sector in which the category of employees provides service; and
    - includes evidence that the relevant employees satisfy or no longer satisfy (as applicable) the criteria; and
  - received a report from the department on whether the employees in the category of employees satisfy the criteria; and
  - provided the report to, and consult, any employers, employees, representatives of employers or employees, or other persons or organisations as the Minister considers appropriate.
- 13 I have received an application from E tū to add security officers to Schedule 1A, received a report from the Ministry of Business, Innovation and Employment assessing whether the application satisfies the criteria, and consulted security sector employers, unions, BusinessNZ and the NZ Council of Trade Unions.
- 14 Section 237A(2) also requires that I must be satisfied that the category of employees in the application:
- are employed in a sector in which restructuring of an employer's business occurs frequently, and
  - have terms and conditions of employment that tend to be undermined by the restructuring of an employer's business, and
  - have little bargaining power.
- 15 I am satisfied that these criteria have been met for the specified services in the security sector.

### **Regulations Review Committee**

- 16 There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 17 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet, subject to the Minister for Workplace Relations and Safety meeting the requirements in sections 237A(2) and (5) of the Employment Relations Act.

18 As set out above I have complied with these requirements.

### **Impact Analysis**

19 A Regulatory Impact Analysis Summary Assessment has been completed and was submitted at the time the policy was agreed by Cabinet [CBC-20-MIN-0071]. The MBIE Regulatory Impact Analysis Review Panel advised the Assessment met quality assurance standards.

### **Publicity**

20 I intend to announce the Order in Council.

21 MBIE will prepare information and guidance for the security industry in cooperation with unions and employers.

### **Proactive release**

22 I intend to release this paper proactively within 30 days. The paper will be published on the Ministry of Business, Innovation and Employment's (MBIE) website.

### **Consultation**

23 In May 2020, the Ministry of Business, Innovation and Employment (MBIE) undertook consultation on its report into whether the application from E tū to add security officers to Schedule 1A satisfied the statutory requirements in the Employment Relations Act. Submissions were received from unions and employers on the report.

24 MBIE has also undertaken a targeted consultation on the draft Order in Council with E tū, NZ Council of Trade Unions, the NZ Security Association and BusinessNZ.

25 The following agencies have been consulted on the Cabinet paper and Order: the Department of Corrections, Ministry of Justice, Ministry for Social Development, Ministry for Pacific Peoples, Te Puni Kōkiri, the Treasury, and the Department of the Prime Minister and Cabinet.

### **Recommendations**

I recommend that Cabinet Legislation Committee:

1 **note** that on 25 November 2020 the Cabinet Business Committee agreed to add security officers to Schedule 1A of the Employment Relations Act 2000 [CBC-20-MIN-0071]

2 **note** that the Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021 will give effect to the decision referred to in paragraph 1 above;

- 3 **note** that under section 237A of the Employment Relations Act the Minister for Workplace Relations and Safety can recommend to the Governor-General to add categories of workers to Schedule 1A by Order in Council if they are satisfied that the workers:
  - 3.1 are employed in a sector with frequent restructuring,
  - 3.2 have terms and conditions of employment that tend to be undermined by restructuring, and
  - 3.3 have little bargaining power;
- 4 **note** the advice of the Minister for Workplace Relations and Safety is that these requirements have been met.
- 5 **authorise** the submission to the Executive Council of the Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021;
- 6 **note** that the Employment Relations (Extending Part 6A Protections to Security Officers) Order 2021 comes into force on 1 July 2021.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety