



AIDE MEMOIRE

Update on FPA timing – August 2021

Date:	24 August 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-0705

Information for Minister(s)

Hon Wood
Minister Workplace Relations and Safety

Contact for telephone discussion (if required)

Name	Position	Telephone	Privacy of Natural Persons	1st contact
Tracy Mears	Manager, Employment Relations Policy	04 901 8438		✓
Beth Goodwin	Principal Advisor	04 901 1611		

The following departments/agencies have been consulted

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Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

To provide additional context and information following our discussion at the WRS Officials meeting on 23 August about a delay to the Fair Pay Agreements Bill. We have also provided some talking points if you wish to discuss with the Attorney-General.

Tracy Mears
Manager, Employment Relations Policy
Labour, Science Enterprise, MBIE

24 / 8 / 2021

Status of drafting and new estimate for introduction date

1. PCO have now worked through the first tranche of drafting instructions, and have commenced on Tranche 2. They are now at a stage where they can give an indication of the time needed to complete the Bill. PCO's estimate is 3 months from the time the final drafting instructions are received. This estimate includes bringing an additional drafter onto the project from September, in recognition of the size, complexity and importance of the task.
2. In order to get the final set of drafting instructions to PCO, MBIE need to advise and get decisions on four outstanding policy issues (relating to default bargaining parties, public interest test, coverage of Police and other special entities, and judicial review). These are the bare essential policy decisions needed. This would mean we rule out including an exposure draft of the prescribed form for FPAs with the Bill on introduction.
3. We estimate that it will take one week for the policy process and a further four weeks to complete the drafting instructions. This is a process that turns the policy decisions into specific detailed concepts that PCO can then use to create the structure and wording of the Bill. This requires both policy and legal resource with a detailed knowledge of the FPA system.
4. So our best estimate at this stage is that it will be 4 months before the drafting of the FPA Bill will be complete. A further 4 weeks is then needed to complete the remaining processes (BORA vet, approval by LEG committee and Cabinet) before the Bill can be introduced. Our current estimate is that the earliest date for introduction of the Bill is late February/early March.

Stage of the process	Previous estimate	Updated estimate
All policy decisions	-	1 Sept 2021
Final drafting instructions provided to PCO	30 Aug 2021	1 Oct 2021
Bill drafted	21 Oct 2021	Mid Jan 2021
BORA vet complete	Late Oct 2021	Late Jan 2022
LEG Cabinet Committee	Oct/Nov 2021	2nd week Feb 2022
Bill introduced	Nov 2021	Late Feb/early March 2022
First reading and Bill referred to Select Committee	Nov 2021	Late Feb/early March 2022
Select Committee reports back	May 2022	Sept 2022
Remaining stages (depending on House priorities)	June 2022	Oct 2022

5. You asked what would have to happen for the Bill to be introduced this year. There are a number of interdependencies (most of which are outside of MBIE's direct control) that will need to happen for this to occur. Given this, we think that chances of a December introduction are slim, and there would be risks and costs (primarily to quality) created by aiming for this.
6. To achieve a December introduction the following changes to the timeline will need to happen:

Change	Risks and trade offs	Owner
4 weeks for policy decisions and drafting instructions instead of 5 weeks	<ul style="list-style-type: none"> • Reprioritisation of other WRS work e.g. pause work on Screen with consequent impact on timing. • Size and complexity of task may mean timeline cannot be met. • Instructions may be incomplete which will affect ability of PCO to draft effectively 	MBIE Legal and WRSP
10 weeks for drafting instead of 12 weeks	<ul style="list-style-type: none"> • Reprioritisation of other WRS work • Size and complexity of task may mean timeline cannot be met. • May compromise quality of the Bill and increase risk of errors 	PCO (with support from MBIE Legal and WRSP)
BORA vet done on a draft Bill simultaneous with drafting		Ministry of Justice
Straight to Cabinet (not via LEG). Saves 1 week.		Minister would need to seek permission

7. That hypothetical timeframe would look like this:

Stage of the process	For first reading to be possible by the end of 2021 (NB this must be read with caveats above)
All policy decisions	1 Sept 2021 (1 week)
Final drafting instructions to PCO	22 Sept (3 weeks)
Bill drafted (incl BORA vet)	2 Dec (10 weeks)
Cabinet	6 Dec (skip LEG Cabinet Committee)
Bill introduced	7 Dec 2021
First reading	14 Dec 2021 (allowing 3 sitting days between introduction and first reading)

Points you could discuss with Attorney-General

8. You indicated you wanted to check with the Attorney-General whether anything further could be done to reduce the delay. We suggest points you could discuss include:

- whether any additional PCO resources could be added
- whether any projects within the portfolio could be reprioritised to free up PCO resource; and
- whether any of those measures would make a material difference to the timeframe.

Prioritisation choices for legal input

9. There are some choices about prioritisation within the portfolio that may reduce the time needed for preparing the drafting instructions. Currently legal resources are being used to progress a range of bills and regulations across the portfolio.

10. As drafting instructions progress, it is inevitable that further policy and legal questions arise. It is also possible that draft versions of the Bill will begin arriving from PCO while the outstanding policy work and drafting instructions are being prepared, which will stretch available resources. There is some overlap between the personnel working on FPAs and those working on the Screen Industry Workers Bill (SIWB). Pausing or slowing work on the SIWB will enable a greater focus on FPA drafting instructions and outstanding matters. However, this would consequentially slow work on the SIWB and it is unclear to what extent it will speed up FPA drafting instructions.

11. If unexpected issues arise in the remaining FPA work, in order to reduce the risk that such additional work affects the timeframe, it may be necessary to draw on additional legal personnel. Currently those people are working on a range of legal issues across the portfolio including several significant sets of health and safety regulations (mining and quarrying, hazardous substances fixes, refrigerants licencing system, plant and structures), the Matariki Bill, the Migrant Exploitation Bill, and the Workplace Relations and Safety Regulatory Systems Bill.

12. There are therefore some prioritisation choices you can make to increase the likelihood of policy decisions and drafting instructions being completed in 4 weeks instead of 5. Any work that is deprioritised for FPA would likely only be put on hold for a few weeks, but this is likely to have a knock on effect on other milestones. At the next officials meeting we would like to discuss with you whether you would want to:

- pause work on the Screen Industry Workers Bill.

- identify another project within the portfolio (listed in para 10) that is currently using legal resources that could be paused if unexpected work on FPAs arises that requires additional legal resource.