



BRIEFING

Fair Pay Agreements: Update on timeframes

| | | | |
|---------------------------------|-----------------|-------------------------|-----------|
| Date: | 5 November 2021 | Priority: | High |
| Security classification: | In Confidence | Tracking number: | 2122-1666 |

| Action sought | | |
|--|---|-----------------|
| | Action sought | Deadline |
| Hon Michael Wood Minister for Workplace Relations and Safety | Note our current estimate for the introduction date of the FPA Bill Agree a course of action in relation to incorporating the new backstop into the FPA Bill | 8 November 2021 |

| Contact for telephone discussion (if required) | | | | |
|--|--------------------------------------|-------------|----------------------------|-------------|
| Name | Position | Telephone | | 1st contact |
| Tracy Mears | Manager, Employment Relations Policy | 04 901 8438 | Privacy of Natural Persons | ✓ |
| Beth Goodwin | Principal Policy Advisor | 04 901 1611 | | |

| The following departments/agencies have been consulted |
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| |

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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Purpose

This briefing provides an update on the timeframe for the Fair Pay Agreements work, and seeks your direction on when to incorporate the new backstop into the Bill.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** our current estimate is that the FPA Bill will be able to be introduced on 28 March 2022 and that this briefing provides you with options to minimise the chance of that date moving back.

Noted

- b **Agree** a course of action in relation to incorporating the new backstop into the FPA Bill:

| | |
|--|-------------------------|
| Incorporate it into the Bill ahead of introduction | <i>Agree / Disagree</i> |
| OR | |
| Incorporate it at Select Committee | <i>Agree / Disagree</i> |

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

5/11/21

Hon Michael Wood
Minister for Workplace Relations and Safety

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Timeframes for FPA system

1. We know that timing for the FPA Bill is important to you and we constantly keep our FPA timeframes under review. An emerging issue is that current policy work is risking further delay to the introduction of the FPA Bill. This briefing seeks your decision on a key choice about how to progress that work and mitigate the risk of delay.

There are two main constraints affecting progress on the Bill

MBIE

2. We have been preparing advice on two main areas: Labour Inspectorate powers, and the new backstop when one side to an FPA has no bargaining parties. We will shortly provide advice to you on both of these matters, and seek your decisions on them before 15 November. A key factor in our advice will be the ease of incorporating the new backstop arrangements into the existing FPA system. If further work is required on those design aspects this will add further delay.
3. Work on these large policy briefings has slowed our work reviewing drafting instructions on already-agreed parts of the FPA system. In addition, other work across the portfolio has affected our ability to pull in additional resources from within the Employment Relations Policy team and across the wider Workplace Relations and Safety Policy branch.
4. Once you have made policy decisions, we need to then write detailed drafting instructions to incorporate the new backstop and Labour Inspectorate powers into the FPA system, as well as completing the remaining instructions scheduled for Tranche 4. It is our assessment this will take 4 weeks from the date of your decisions, until 13 December 2021.

PCO

5. The drafter working on the FPA Bill has also been working on other Workplace Relations and Safety legislation, including the Health and Safety Mining and Quarrying regulations (which is nearly complete), and the Matariki Bill. He has almost finished tranche 3 of our instructions.
6. PCO has said they need 12 weeks after they receive final drafting instructions to finalise the FPA Bill. In calculating these 12 weeks, we have excluded two weeks over the Christmas break. However, progress through January and February is also likely to be slower than usual due to people across the relevant agencies taking leave. We can mitigate this somewhat from our end by providing full drafting instructions ahead of Christmas.

What this means for progress on the Bill

7. Our latest assessment of the remaining steps to introduction are as follows. This timeframe is still ambitious and provides very little time between some steps (for example, lodging the LEG paper on the day drafting is completed, and introducing the Bill to Parliament later on the same day Cabinet agreed to introduce). We have not fully checked whether there are procedural requirements which would mean these dates are not possible.

| Current estimated timeframe for FPA Bill | |
|--|-------------|
| Backstop briefing | 11 Nov 2021 |
| Minister's decisions on backstop | 15 Nov 2021 |
| Provide draft letter to send to Attorney-General, seeking approval to draft ahead of Cabinet decisions (which we can prepare in advance of your decisions on the policy but cannot send until they have been made) | 22 Nov 2021 |
| All drafting instructions complete (assuming A-G grants approval to draft ahead of Cabinet) | 13 Dec 2021 |

| | |
|--|-----------------------------|
| 12 weeks to complete drafting | 13 Dec 2021 – 18 March 2022 |
| BORA vet (simultaneous with finalisation of drafting) complete | 18 March 2022 |
| LEG Cabinet Committee (or option to go straight to Cabinet) | 24 March 2022 |
| Cabinet | 28 March 2022 |
| Bill introduced | 28 March 2022 |
| First reading and Bill referred to Select Committee | 31 March 2022 |

8. Decisions on both the backstop and Labour Inspectorate powers (if you agree to add more powers) require Cabinet decisions. You have discussed with the Attorney-General the possibility of PCO beginning drafting prior to Cabinet decisions, and he has indicated his support. Once you have made decisions on the briefings, we will provide a draft letter to your office to send to the Attorney-General seeking his agreement.
9. If the Attorney-General were to decline your request in his formal response, this would further require work to pause while Cabinet decisions are sought, which will delay the Bill. One possibility is that the Attorney-General will approve the request but require that Cabinet decisions are sought ahead of the final LEG sign-off. This may also create a slight delay. If either of these occurs, we can provide you an updated timeframe.

Options to speed up the Bill

10. We are working towards a March 2022 introduction and have considered ways that we can mitigate the risk of the compressed timeframes above. The mitigation that is wholly within our control is to push all further policy considerations, including the backstop, to Select Committee.
11. One way to speed up the introduction of the Bill would be to continue to draft the Bill with BusinessNZ as the default bargaining party. You could then incorporate the alternative backstop into the Bill at Select Committee.
12. The advantage of this option is that it would enable the timeframe for introduction to be brought forward slightly from our current prediction above, because drafting instructions could be complete by the end of November, but more importantly that this date would be less at risk of moving than the above current timeframe.
13. That timeframe would be as follows:

| Timeframe if Bill was introduced without incorporating the new backstop | |
|--|--------------------|
| All drafting instructions complete | 30 Nov 2021 |
| 12 weeks to complete drafting | 1 Dec – 9 Mar 2022 |
| BORA vet complete | 9 March 2022 |
| LEG Cabinet Committee (or option to go straight to Cabinet) | 17 March 2022 |
| Cabinet | 21 March 2022 |
| Bill introduced | 21 March 2022 |
| First reading and Bill referred to Select Committee | 24 March 2022 |

14. This course of action also has risks.

Constitutional conventions



15. Our overall assessment is that delaying the incorporation of the new backstop to Select Committee would reduce the risk to the introduction date, but would risk a lower quality Bill, which could then delay the date for passing the Bill.
16. The trade-off for your consideration is whether you:
 - Prioritise the introduction of the Bill, which may mean a longer passage through the House; or
 - Prioritise finalising the drafting for introduction, which means there is more risk to the timeframe for introduction.

Next steps

17. We would like to discuss this briefing with you at our meeting on 8 November 2021.