



BRIEFING

FPAs: clarifications on public sector bargaining representation

Date:	26 November 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2122-2008

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Agree to the recommendations	30 November 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Tracy Mears	Manager, Employment Relations Policy	04 901 8438	[Redacted]	✓
Beth Goodwin	Principal Policy Advisor	04 901 1611		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

FPA: clarifications on public sector bargaining representation

Date:	26 November 2021	Priority:	High
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Purpose

To seek clarification decisions on three aspects of public sector bargaining representation in the Fair Pay Agreements (FPA) system.

Recommended action

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

- a **Agree** that the Public Service Commissioner and the Chief Executive of the new Health NZ will be the bargaining representative for public, education and health service employers respectively.

Agree / Disagree

- b **Agree** that tertiary institutions be excluded from the definition of 'Education Service' for the purposes of FPA bargaining representation.

Agree / Disagree

- c **Note** that the Pae Ora Health Reforms Bill is not expected to pass before the FPA Bill is introduced, so the FPA Bill needs to be drafted with interim arrangements for bargaining representation for District Health Boards, which will then be replaced with references to Health NZ when established.

Noted

- d **Agree** that those interim arrangements will be that the Director-General of Health will:

- i. be the employer bargaining party for DHBs for FPA purposes
- ii. be able to delegate this function to the Chief Executive of Health New Zealand (a newly-created departmental agency that is the precursor to the proposed future entity)
- iii. not have any obligations to represent any other employers (and likewise, other employers will not be required to represent DHBs)
- iv. be required to consult DHBs when undertaking employer bargaining party functions

Agree / Disagree

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

26 / 11 / 2021

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

1. We have previously advised you on various aspects of employer representation for the FPA system. In preparing drafting instructions for the FPA Bill, three matters have arisen which we require your decision on.

Clarification on who is the ‘direct bargaining party’ for public, education and health services

2. In July 2021, we sought a decision from you on how Public Service, Education Service and District Health Boards (DHBs) employers should be represented in FPA bargaining [briefing 2021-4436 refers]. For brevity we shortened that grouping to “PEH employers”.
3. We provided you with 3 options, 2 of which are as follows (emphasis added):

Option 2: amend the form requirements only, so that *the Public Service Commissioner and the Chief Executive of the new Health NZ organisation* can be direct bargaining parties without having to form, or be members of, incorporated societies.

Option 3: amend both form and function requirements, so that PEH employers can be represented *by a direct bargaining party* but would not have any bargaining obligations to private sector employers, and likewise the private sector bargaining party would not have any bargaining obligations to represent PEH employers”
4. You agreed to Option 3 on MBIE’s recommendation. However, we have realised that Option 3 did not specify which entity/ies will be the “direct bargaining party”, despite the rest of the briefing (and Option 2) indicating that it would be “the Public Service Commissioner and the Chief Executive of the new Health NZ organisation”.
5. For our records, we seek your confirmation that the Public Service Commissioner and the Chief Executive of the new Health NZ will be the respective bargaining parties for PEH employers.

Clarification that tertiary institutions fall outside ‘Education Service’

6. In the same briefing, we included tertiary institutions in the definition of ‘Education Service’. Tertiary institutions comprise universities, wānanga and Te Pūkenga—New Zealand Institute of Skills and Technology. In the context of consulting on drafting instructions, Te Kawa Mataaho Public Service Commission and Ministry of Education have alerted us that for the purposes of existing collective bargaining and pay equity arrangements, tertiary institutions are excluded.
7. To maintain consistency with those other bargaining systems, we now recommend that tertiary institutions are excluded from the definition of ‘Education Service’. The effect of this decision will be that where a proposed FPA covers any employees of a tertiary institution:
 - Chief Executives of those institutions will be the employer for FPA purposes
 - They may participate in bargaining in the same way as Crown entities and private sector employers, that is, they may form or join an incorporated society which is a bargaining party, or input indirectly while remaining outside a bargaining party.

Interim drafting for health service until Health NZ is established in law

8. Advice and decisions to date in relation to the health service have focussed on the forthcoming Health NZ – in particular (as described and advised above) that the Chief Executive of Health NZ will be the bargaining party for Health NZ in the FPA system.
9. However, the proposed Pae Ora Health Reforms Bill, which will establish Health NZ, is still before Parliament and due to come into force on 1 July 2022 – after the FPA Bill is introduced to Parliament. This means we need to draft an interim arrangement for District Health Boards (DHBs) into the FPA Bill based on the law as it currently stands (i.e. we cannot instruct PCO to include provisions in the FPA Bill based on future legislation and structures/roles that don't yet exist).
10. We've discussed appropriate interim arrangements with the Ministry of Health and the Transition Health Unit at Department for Prime Minister and Cabinet. We have sought to provide appropriate arrangements that will allow for easy substitution.
11. In relation to bargaining representation, we propose to draft interim arrangements into the FPA Bill for introduction, whereby the Director-General of Health will:
 - be the employer bargaining party for DHBs for FPA purposes
 - be able to delegate this function to the Chief Executive of Health New Zealand (the newly-created departmental agency that is the precursor to the proposed future entity)
 - not have any obligations to represent any other employers (and likewise, other employers will not be required to represent DHBs)
 - be required to consult DHBs when undertaking employer bargaining party functions.
12. Once the Pae Ora Health Reforms Bill has passed into law (likely to occur while the FPA Bill is at Select Committee), we will seek your approval to replace those provisions with references to the new structures, primarily Health NZ.

Next steps

13. We request your decisions on these three topics by 30 November 2021, so we can deliver the drafting instructions to Parliamentary Counsel Office on that date.