



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of briefing</b>	Fair Pay Agreements Bill: Public Interest Test Criteria and Delegated Authority for Key Regulations	<b>Date to be published</b>	27 October 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2022	Fair Pay Agreements Bill: Public Interest Test Criteria and Delegated Authority for Key Regulations	Office of the Minister for Workplace Relations and Safety
10 August 2022	Cabinet minute: DEV-22-MIN-0185	Cabinet Office

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's and MFAT'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.

- Confidential advice to government



# Cabinet Economic Development Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Fair Pay Agreements Bill: Public Interest Test Criteria and Delegated Authority for Key Regulations

**Portfolio**                      **Workplace Relations and Safety**

On 10 August 2022, the Cabinet Economic Development Committee:

#### Background

1        **noted** that:

- 1.1      on 28 March 2022, Cabinet agreed to the introduction of the Fair Pay Agreements Bill (the Bill) [CAB-22-MIN-0095];
- 1.2      the Bill was referred to the Education and Workforce Committee following its first reading on 5 April 2022;

#### Public interest test criteria for regulations

- 2        **noted** that regulations specifying the details of the public interest test criteria are necessary for day one of the Fair Pay Agreement (FPA) system to support decision-making by the Chief Executive of the Ministry of Business, Innovation and Employment and to reduce the risk of successful judicial review;
- 3        **agreed** to implement the intent of the following policy proposals on how to satisfy the public interest test criteria (set out in clause 29(4) of the Bill) into the regulations, subject to Parliamentary Counsel Office drafting:
  - 3.1      ‘low pay’ (clause 29(4)(a) of the Bill), being where within a proposed covered occupation or industry:
    - 3.1.1    a significant proportion of employees are receiving an hourly rate of pay that is equal or close to the hourly minimum wage; and
    - 3.1.2    a very small proportion of employees are receiving an hourly rate of pay that is close to the hourly median wage or higher;
  - 3.2      ‘little bargaining power’ (clause 29(4)(b) of the Bill), being where employees within a proposed covered industry or occupation experience difficulties in being able to bargain collectively for employment terms and conditions, evidenced by:
    - 3.2.1    low union representation or coverage; or

- 3.2.2 low collective employment agreement coverage; or
- 3.2.3 examples of unsuccessful attempts to initiate collective bargaining;
- 3.3 'lack of pay progression' (clause 29(4)(c) of the Bill), being where a significant number of employees within a proposed covered industry or occupation experience no, or minimal, increases in wages over time, despite attainment of job-related training, skills, or experience, which is evidenced by low difference in pay between recently hired employees and employees who have been in the same role or occupation for a relatively long time;
- 3.4 'long or unsocial hours, or contractual uncertainty, that is not adequately compensated' (clause 29(4)(d) of the Bill), being where the following is not reflected in the rate of pay or compensation for a significant number of employees in a proposed covered industry or occupation:
  - 3.4.1 working more than 40 hours in a week, and the majority of hours or days worked are outside of standard business hours or days; or
  - 3.4.2 receiving variable levels of income from work on a weekly or fortnightly basis; or
  - 3.4.3 high use of casual or temporary employment contracts;
- 4 **agreed** to implement the intent of the policy proposals listed in Annex 1 of the paper under DEV-22-SUB-0185 into the regulations for the types of evidence that a union can submit in support of an FPA application through the public interest test (clause 29(5) of the Bill), subject to Parliamentary Counsel Office drafting;

### **Delegated decision-making authority for the content and form of FPAs**

- 5 **noted** that clauses 114(5), 115(3) and 118(c) of the Bill specify the FPA terms that are required to be set out in a prescribed form in regulations;
- 6 **noted** that extensive policy work is required for this regulation, and that delegating authority to the Minister for Workplace Relations and Safety can ensure the Bill's implementation timeframes are met;
- 7 **authorised** the Minister for Workplace Relations and Safety to make decisions consistent with the FPA Bill on specifying the prescribed form in regulations for the following FPA terms:
  - 7.1 the date on which the agreement comes into force and expires;
  - 7.2 the coverage of the agreement;
  - 7.3 the normal hours of work for each class of employees covered by the agreement;
  - 7.4 minimum base wage rates, and when the rates apply;
  - 7.5 rates of payment for any overtime worked, and when the rates apply;
  - 7.6 penalty rates, and when the rates apply;
  - 7.7 the specified amount, or calculation, that can be applied to adjust the minimum base wage rates, overtime rates, and penalty rates;

- 7.8 training and development requirements;
- 7.9 governance arrangements;
- 7.10 the process for each bargaining side to engage with the other bargaining side if a bargaining side requests agreement to bargain for a proposed variation, or if bargaining to vary the agreement;
- 7.11 leave entitlement provisions which are direct increases to the minimum entitlements provided under the Holidays Act 2003 (including payment for any increases);

### Forms required in the ER Act regulations for FPA system

- 8 **noted** that there are several forms required to allow parties to file with the Employment Relations Authority (eg to seek a determination on FPA terms) and the Employment Court that must be established through amendments to the Employment Relations Authority Regulations 2000 and the Employment Court Regulations 2000;
- 9 **authorised** the Minister for Workplace Relations and Safety to make decisions consistent with the FPA Bill to approve the design of the forms required for the FPA system, which fall within the purview of the regulations enabled under the Employment Relations Act 2000, including making changes to the substantive provisions of the regulations to give effect to the forms;

### Legislative implications

- 10 **noted** that the essential FPA regulations will be progressed in two tranches to meet the implementation timeframes for the Bill, with Tranche 1 regulations to be made following Royal Assent;
- 11 **noted** that the Tranche 1 regulations consist of the public interest test criteria details and three additional regulations that have previously been approved by Cabinet [CAB-22-MIN-0291 and CAB-22-MIN-0080.02];
- 12 **invited** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 13 **noted** that the Parliamentary Counsel Office will decide how to draft the above proposals, and will make any other amendments necessary to give effect to their policy intent;
- 14 **authorised** the Minister for Workplace Relations and Safety to make decisions, consistent with the above paragraphs, on any issues that arise during the drafting process.

Janine Harvey  
Committee Secretary

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**Present: (see over)**

**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Megan Woods  
Hon David Parker  
Hon Damien O'Connor  
Hon Willie Jackson  
Hon Michael Wood  
Hon Dr Ayesha Verrall  
Hon Priyanca Radhakrishnan  
Hon Meka Whaitiri  
Hon Phil Twyford  
Hon Kieran McAnulty  
Dr Deborah Russell MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV