



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Fair Pay Agreements Regulations 2023 – Tranche two	Date to be published	28 June 2023

List of documents that have been proactively released

Date	Title	Author
27 April 2023	Fair Pay Agreements Regulations 2023 – Tranche two	Office of the Minister for Workplace Relations and Safety
4 May 2023	Fair Pay Agreements: Tranche Two Regulations LEG-23-MIN-0040 Minute	Cabinet Office
30 March 2023	Fair Pay Agreements: Tranche Two Regulations LEG-23-MIN-0023 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

Fair Pay Agreements Regulations 2023 – Tranche two

Proposal

1 This paper seeks authorisation for submission of the following regulations to the Executive Council:

1.1 *Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023*

1.2 *Employment Court (Fair Pay Agreements) Amendment Regulations 2023*

1.3 *Fair Pay Agreements Amendment Regulations 2023.*

Executive Summary

2 On 1 November 2022, the *Fair Pay Agreements Act 2022* (the Act) received Royal assent. The substantive provisions of the Act commenced on 1 December 2022.

3 There are several key provisions in the Act that require accompanying regulations. The timing of specific regulations has been staggered into tranches based on when they are required to support the Fair Pay Agreements (FPA) system.

4 Tranche two primarily covers regulations that are required to support FPA bargaining. The regulations in tranche two have now been developed and I am seeking approval for the amendments proposed in these regulations.

5 These regulations cover the requirements for the:

5.1 forms required to allow parties to file with the Employment Relations Authority (the Authority) and Employment Court for an FPA-related matter;

5.2 content and form of the mandatory terms of an FPA.

Policy

Background

6 The *Fair Pay Agreements Act 2022* (the Act) received Royal assent on 1 November 2022. The substantive provisions of the Act commenced on 1 December 2022, enabling unions to submit applications to the Ministry of Business, Innovation and Employment (MBIE) for approval to initiate FPA bargaining.

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- 7 Several key provisions of the Act require accompanying regulations. The timing of the development of these regulations have been staggered into tranches in line with the key stages of the FPA development timeline.
- 8 The first tranche of FPA regulations covered the regulations that were required by the date the Act came into force. These regulations primarily supported the initiation and application process, which included further details on satisfying the public interest test and describing coverage. These regulations, *Fair Pay Agreements Regulations 2022*, were approved by Cabinet on 28 November 2022 [CAB-22-MIN-0536] and commenced on 1 December 2022.
- 9 I am seeking approval for tranche two, which covers the regulations required to support bargaining. These regulations need to be in place before late June 2023, as this is the earliest date when the bargaining sides for the first proposed agreement may form. Tranche two consists of the following:
- 9.1 Amendments to regulations made under the *Employment Relations Act 2000* (ER Act) to establish or amend the necessary forms (accompanied by the appropriate fee) to enable parties to bring an FPA matter to the Authority and Employment Court.
- 9.2 Amendments to the *Fair Pay Agreements Regulations 2022* to set out how the specified mandatory FPA terms must be expressed in the FPA. This includes the terms that constitute Minimum Entitlement Provisions (MEPs) and will be enforceable by the Labour Inspectorate¹.
- 10 On 10 August 2022 the Cabinet Economic Development Committee (DEV) authorised me as Minister for Workplace Relations and Safety to make decisions consistent with the FPA Bill:
- 10.1 to approve the design of the forms required for the FPA system, which fall within the purview of the regulations enabled under the ER Act, including making changes to the substantive provisions of the regulations to give effect to the forms;
- 10.2 on specifying the prescribed form in regulations for the mandatory FPA terms listed in section 123(1) of the Act [DEV-22-MIN-0185].
- 11 DEV also authorised me as the Minister for Workplace Relations and Safety to make decisions, consistent with the proposals in these recommendations, on any issues that arise during the drafting process [DEV-22-MIN-0185]. These decisions were confirmed by Cabinet on 15 August 2022 [CAB-22-MIN-0315]. I have made decisions using that delegated authority, and this paper seeks to have them confirmed in regulations. This paper also seeks confirmation on decisions I have made in relation to two minor and technical matters.

¹ The *Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023* include regulations in relation to applications to initiate bargaining and default bargaining parties. There is no amendment to the content of those regulations, but they are included in order to insert new headings to split these regulations in three Parts.

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Forms required under the ER Act to extend the dispute resolution system to cover FPA-related matters

- 12 Many new forms must be created to support the FPA system. Most of these forms can be approved by the Chief Executive (CE) of MBIE under the Act. However, some relate to the ability for parties to file with employment institutions that are governed under the ER Act: the Authority and the Employment Court. Both institutions are governed by the ER Act, but parties will need to use them for FPA-related purposes.
- 13 The required forms need to be established through an amendment to the *Employment Relations Authority Regulations 2000* and the *Employment Court Regulations 2000*, which sit under the ER Act.

Amendments to the Employment Relations Authority Regulations 2000

- 14 Ten new forms, plus an amendment to one existing form, need to be added to the *Employment Relations Authority Regulations 2000* to enable the Authority to perform its various roles under the Act to support the FPA system.
- 15 Those ten new forms relate to various scenarios possible in the FPA system:
 - 15.1 Application to fix terms of fair pay agreement: absence of bargaining side
 - 15.2 Statement in reply to application to fix terms of fair pay agreement in absence of bargaining side
 - 15.3 Application to fix terms of fair pay agreement: bargaining sides' inability to agree
 - 15.4 Statement in reply to application to fix terms when bargaining sides unable to agree
 - 15.5 Application for non-binding recommendation for proposed variation or proposed agreement
 - 15.6 Statement in reply to application for non-binding recommendation for proposed variation or proposed agreement
 - 15.7 Submission for compliance assessment
 - 15.8 Submission for determinations relating to coverage overlap
 - 15.9 Application for determination in relation to other matters
 - 15.10 Statement in reply to application for determination in relation to other matters.
- 16 In most cases there is a form for the applicant to use and a corresponding 'statement in reply' form for the other party if they want to reply to any arguments or add any additional information in relation to the initial application. There is no statement in reply for submissions for a compliance assessment and determinations relating to coverage overlap (15.7 and 15.8 above) as these submissions are made by both bargaining sides (meaning there is no respondent).

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- 17 Annex A outlines the relevant Authority function in the Act that each form relates to. The regulations specify the information requirements for the different types of forms, rather than including the forms themselves in regulations. Amendments have also been made to some of the existing regulations to incorporate references to the Act and new forms, where required.
- 18 In addition to the new forms, the content of form 7 ‘Application for removal of matter to Employment Court’ in the *Employment Relations Authority Regulations 2000*, and when it can be used, is amended so that it can be used for an application to remove a matter, or part of a matter, to the Employment Court under clause 14 of Schedule 3 of the Act.
- 19 The fees table in Schedule 2 is updated to apply fees, where applicable, to the new forms. I am not proposing to change the fees associated with current forms. Where a comparable function already exists under the ER Act, the existing fee will apply. Where there is a new function (eg a compliance assessment of a proposed agreement) no fee will apply. Annex B sets out the new forms and the applicable fee.

Amendments to the Employment Court Regulations 2000

- 20 The FPA Act enables parties to appeal disputes from the Authority to the Employment Court. To enable the Employment Court to undertake this function there needs to be two new forms, and an amendment to one existing form, added to the *Employment Court Regulations 2000*.
- 21 The two new forms required are as follows:
- 21.1 Statement of claim to challenge determination of Authority under *Fair Pay Agreements Act 2022*
- 21.2 Application for stay of proceedings under *Fair Pay Agreements Act 2022*
- 22 Annex C outlines the relevant Authority function in the Act that each form relates to.
- 23 In addition, the content of form 3 ‘Application for special leave to remove matter to the Employment Court’ in the *Employment Court Regulations 2000*, and when it can be used, is amended to enable it to be used for an application for special leave to remove an FPA matter to the Employment Court under clause 14 of Schedule 3 of the Act.
- 24 A notification requirement is included whereby the Registrar of the Court must, as soon as practicable after making a stay of proceedings for a FPA matter, notify the CE of MBIE that the stay has been granted. This is to ensure that the CE knows that the stay has been issued in relation to a determination that fixes the terms of a proposed agreement, as if a stay has been ordered it means the FPA notice (putting the proposed agreement in force) may not be able to be made until the matter has been resolved.
- 25 Amendments are also made to some of the existing regulations to incorporate references to the Act and new forms where applicable.

Technical amendment – Employment Court Fees

- 26 Schedule 3 of the *Employment Court Regulations 2000* specifies the fees that the Employment Court can charge for applications and for hearings. As per the approach to Authority forms, the amendments will apply the existing fee when a new form relates to a comparable function that the Employment Court performs under the ER Act.
- 27 In addition, I am taking the opportunity provided by these amendments to make the figures for fees specified in the regulations Goods and Services Tax (GST) exclusive. These fees are currently specified as GST inclusive but only include 12.5 percent GST, as they have not been updated since GST increased to 15 percent in 2010². The Employment Court has, nonetheless, been able to include the increase in GST in the fees it charges. This is because section 78(3) of the *Goods and Services Tax Act 1985* applies an increase in GST to any fee listed in any other legislation (unless there is a contrary provision).
- 28 I am proposing to amend the fees specified in Schedule 3 to be GST exclusive to avoid any potential confusion as to why the Employment Court can charge more than is specified in the regulations, and to future proof the figures for any further changes in GST.
- 29 This would align with the change made last year (via the *Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022*) to how fees are specified in the *Employment Relations Authority Regulations 2000*.
- 30 I have approved the drafting of this minor and technical amendment. I am seeking Cabinet approval for this amendment as part of the approval of these regulations. Annex D sets out the GST exclusive figure for fees for forms (for both existing forms and a new FPA-related form) and hearings.

Content and form of specified mandatory FPA terms

- 31 Section 123 of the Act specifies a set of topics that all FPAs must contain (referred to as ‘mandatory terms’). The Act includes regulation making powers in sections 123(5), 128(b) and (c), and 135(4) specifying that certain FPA terms must be in a prescribed format, and include all the details, as required in the regulations.
- 32 Many of the mandatory terms will set new Minimum Entitlement Provisions (MEPs) for covered employees, which will be enforceable by the Labour Inspectorate in the way that MEPs in the ER Act are currently enforceable.
- 33 Prescribing how these MEPs can be expressed in finalised FPAs will promote consistency across FPAs so that terms can be easily understood and applied by bargaining sides, employers, and employees. Equally, it will better enable the Labour Inspectorate to interpret and enforce these terms (in relation to the minimum entitlement provisions). Where a MEP relates to a current MEP in another piece of

² The one exception is the fee for a new form (form 1AA) that was added in 2011. As this form was added after the GST amount was increased, it includes 15 percent GST.

legislation (eg minimum base wage rates) it needs to be expressed in the same way as the existing MEP.

34 The format for the mandatory terms that are MEPs provides flexibility for bargaining sides to choose how to express them. For example, bargaining sides could decide to set the FPA minimum base wage rate as a percentage of the national minimum wage (eg 120 percent) or just use a set figure.

35 The *Fair Pay Agreements Amendment Regulations 2023* will require the MEPs listed below to be expressed in a prescribed form:

35.1 Minimum base wage rates – this requires parties to express the minimum base wage rates in a way that is consistent with the approach in the Minimum Wage Order (which is empowered by sections 4, 4A and 4B of the *Minimum Wage Act 1983*).

35.2 Overtime rates – this will act as a MEP for covered workers and will set out how overtime rates will apply outside of standard hours (eg as set rates or a percentage on top of the standard wage rate).

35.3 Penalty rates – this will act as a new MEP for covered workers and will set out how a penalty rate will apply outside of standard hours.

35.4 Leave entitlement provisions (which are direct increases to the minimum entitlements provided under the *Holidays Act 2003*) – if a proposed agreement includes a leave term that is covered in Part 2 of the *Holidays Act 2003*, the term needs to specify whether it is the same or greater than the entitlement provided in the relevant section of the *Holidays Act 2003* and if the entitlement is expressed as a specified amount, it must be expressed using the same unit of time as the relevant section of the *Holidays Act 2003*.

36 Section 137 of the Act specifies the permitted differentiation for MEPs (ie the terms can only be differentiated by district, occupation, or role of class of employees). The regulations apply this requirement by prescribing the same permitted differentials for all the mandatory terms that are MEPs or are required for calculating certain MEPs (ie standard hours and adjustments to minimum base wage rates, overtime rates and penalty rates).

37 In addition, some of the other mandatory terms (which are not MEPs themselves, but interact with MEPs) need to be expressed in a prescribed way to ensure they meet the requirements within the Act. Similarly, if a mandatory term interacts with an MEP, it is important that those terms are expressed clearly so the MEP will be enforceable by the Labour Inspectorate.

38 In particular, the proposed *Fair Pay Agreements Amendment Regulations 2023* require the mandatory terms listed below to also be expressed in a prescribed way:

38.1 Adjustments to minimum base wage rates – this sets out the method by which the minimum base wage rates can be adjusted (eg as an annual calculation) so needs to be a method that the Labour Inspectorate can apply to easily calculate the adjusted rates (as this becomes the new MEP).

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- 38.2 Standard hours** – this interacts with the penalty rate MEP as it sets out when penalty rates do not apply, so there needs to be consistency in how it is expressed to enable enforcement of penalty rates (which are a MEP).
- 38.3 Adjustments to overtime rates and penalty rates** – this sets out the method by which these rates can be adjusted (eg as an annual calculation) so needs to be a method that the Labour Inspectorate can easily apply to calculate the adjusted rates (as this becomes the new MEP).
- 38.4 Additional types of leave** – this is intended to make it clear that it is possible to include additional types of leave in an FPA that is not an increase to the minimum entitlements provided under the *Holidays Act 2003* (ie that will not become a MEP) and, where these are included, to require some degree of consistency in how they are expressed.
- 39 Several mandatory FPA terms (such as training and development arrangements, coverage, and the commencement date of the agreement) have not been included in the regulations. It was determined through the drafting process that they did not need to be included in the regulations because the regulations added no substantial detail beyond what was required in the Act for these terms.

Technical amendment – CE notice requirements for coverage overlap

- 40 During drafting of these regulations, an issue was identified in relation to the notice that must be issued to amend the coverage of an existing FPA because of a coverage overlap (where applicable)³.
- 41 Under section 169(2) of the FPA Act, whenever the CE of MBIE issues a notice amending the coverage of an existing FPA, the notice must be done “in the form prescribed in regulations”. The intention had been that this would link to the coverage requirements specified in the regulations. However, because section 169(2) relates specifically to the notice itself, the regulations need to explicitly set requirements for the coverage amendment ‘notice’.
- 42 Unless specific requirements for the coverage amendment notice are included in regulations, the CE of MBIE will not be able to address a potential FPA coverage overlap when the system reaches the stage where multiple FPAs are finalised. I propose to address this technical issue by including requirements in the *Fair Pay Agreements Amendment Regulations 2023* specifying the information that must be included in a coverage amendment notice.
- 43 I have approved the drafting of this minor and technical amendment and am seeking Cabinet approval for this amendment as part of the approval of these regulations.

³ This could occur where there is a coverage overlap between a proposed agreement and an existing FPA. In this situation, the Employment Relations Authority would determine which agreement provides the better terms overall for the employees within the coverage overlap. If the proposed agreement provides better terms overall than the existing FPA, then the CE of MBIE would amend the coverage of the existing FPA so that it no longer includes the employees within the coverage overlap.

Timing and 28-day rule

- 44 Notice of the regulations will be published in the Gazette the week they are made by the Governor-General in Executive Council and will come into force on 8 June 2023 (applying the 28-day rule).

Compliance

- 45 The regulations comply with each of the following:
- 45.1 the principles of the Treaty of Waitangi;
 - 45.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*;
 - 45.3 the principles and guidelines set out in the *Privacy Act 2020*;
 - 45.4 relevant international standards and obligations;
 - 45.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

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

Certification by Parliamentary Counsel

- 47 The draft regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 48 The Minister for Workplace Relations and Safety has delegated authority to approve the policy for these regulations (*Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023*, *Employment Court (Fair Pay Agreements) Amendment Regulations 2023* and *Fair Pay Agreements Amendment Regulations 2023*) [CAB-22-MIN-0315] and therefore Cabinet's impact analysis requirements do not apply.
- 49 The Treasury has determined that the additional proposals to adjust the fees for Employment Court forms to be GST exclusive and make amendments to the CE notice requirements for coverage overlap are exempt from the requirement to provide a Regulatory Impact Statement. These exemptions are granted on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 50 The regulations will be notified in the Gazette. MBIE intends to notify stakeholders when the regulations have been made.

Proactive release

- 51 This paper will be proactively released (subject to redactions in line with the *Official Information Act 1982*) within 30 business days of decisions being confirmed by Cabinet.

Consultation

- 52 The following agencies were consulted on the draft regulations: Ministry of Justice, Department of Corrections, Department of the Prime Minister and Cabinet, Inland Revenue, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry for Pacific Peoples, Ministry of Social Development, Ministry of Transport, Ministry for Women, Oranga Tamariki, Public Service Commission, Te Puni Kōkiri, Treasury, Whaikaha - Ministry of Disabled People. No substantive comments were received on the draft regulations.
- 53 Treasury was consulted on the intended approach of applying existing fees to forms that relate to comparable functions that the Authority or Employment Court already perform under the ER Act and amending the Employment Court fees to be exclusive of GST.
- 54 The Employment Relations Authority were also consulted on the draft regulations. The Employment Court was consulted on the content of the amendments to the *Employment Court Regulations 2000*, but not the draft regulations themselves.
- 55 The following non-Crown bodies were consulted on the draft regulations:
- 55.1 BusinessNZ and several of its members (Business Central, Business South, Canterbury Employers' Chamber of Commerce, and the Employers and Manufacturers Association) were consulted on all the tranche two regulations.
- 55.2 The New Zealand Council of Trade Unions were consulted on all the tranche two regulations.
- 55.3 Selected payroll providers from the New Zealand Digital Advisory Group Working Group (Digital Service Providers Australia New Zealand) were consulted on the *Fair Pay Agreements Amendment Regulations 2023* (specifying the form and content of FPA terms).
- 56 Technical changes were made to the regulations based on the comments from the Employment Relations Authority and non-Crown bodies.

Recommendations

I recommend that the Cabinet Legislation Committee:

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- 1 **note** that the *Fair Pay Agreements Act 2022* (the Act) received Royal assent on 1 November 2022, its regulation-making powers in section 283 commenced on 2 November 2022, and the remainder of the Act commenced on 1 December 2022;
- 2 **note** that on 10 August 2022, Cabinet Economic Development Committee authorised the Minister for Workplace Relations and Safety to make decisions consistent with the FPA Bill:
 - 2.1 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
 - 2.2 on specifying the prescribed form in regulations for the following mandatory FPA terms:
 - 2.2.1 the date on which the agreement comes into force and expires
 - 2.2.2 the coverage of the agreement
 - 2.2.3 the normal hours of work for each class of employees covered by the agreement
 - 2.2.4 minimum base wage rates, and when the rates apply
 - 2.2.5 rates of payment for any overtime worked, and when the rates apply
 - 2.2.6 penalty rates, and when the rates apply
 - 2.2.7 the specified amount, or calculation, that can be applied to adjust the minimum base wage rates, overtime rates, and penalty rates
 - 2.2.8 training and development requirements
 - 2.2.9 governance arrangements
 - 2.2.10 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
 - 2.2.11 leave entitlement provisions which are direct increases to the minimum entitlements provided under the *Holidays Act 2003* (including payment for any increases) [DEV-22-MIN-0185];
- 3 **note** that on 10 August 2022, Cabinet Economic Development Committee authorised the Minister for Workplace Relations and Safety to make decisions, consistent with the proposals in [those] recommendations, on any issues that arise during the drafting process [DEV-22-MIN-0185];
- 4 **note** that the Minister for Workplace Relations and Safety approved a further minor and technical change to the *Employment Court Regulations 2000* to make the figures for Employment Court fees GST exclusive;

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- 5 **agree** that the *Employment Court (Fair Pay Agreements) Amendment Regulations 2023* include the minor and technical change to fees outlined in recommendation 4;
- 6 **note** that the Minister for Workplace Relations and Safety approved a further minor and technical change to the *Fair Pay Agreements Amendment Regulations 2023* to specify the information that must be included in a coverage amendment notice;
- 7 **agree** that the *Fair Pay Agreements Amendment Regulations 2023* include the minor and technical change outlined in recommendation 6;
- 8 **note** that the *Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023*, *Employment Court (Fair Pay Agreements) Amendment Regulations 2023*, and *Fair Pay Agreements Amendment Regulations 2023* will give effect to the decisions the Minister for Workplace Relations and Safety made under delegated decision-making authority (referred to in recommendation 2 and 3 above) and the minor and technical amendments approved (referred to in paragraph 4 – 7 above);
- 9 **authorise** the submission to the Executive Council of the:
- 9.1 *Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023*
 - 9.2 *Employment Court (Fair Pay Agreements) Amendment Regulations 2023*
 - 9.3 *Fair Pay Agreements Amendment Regulations 2023*;
- 10 **note** that the regulations listed in paragraph 9 will come into force on 8 June 2023.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety

Annex A: New forms included in the Employment Relations Authority Regulations

Regulation	Form	Relevant Authority function in the Act
26L	Application to fix terms of proposed agreement: absence of bargaining side.	Section 244 enables a bargaining party on the initiating side to apply for the terms of a proposed agreement to be fixed if the other bargaining side does not form within the three-month formation period and the relevant default bargaining party does not agree to step in to bargain.
26N	Statement in reply to application to fix terms of fair pay agreement in absence of bargaining side.	This statement of reply is only available in the limited situations where there is a bargaining party on the opposing side. In most cases there would not be a bargaining party on the opposing side (as this is what caused the determination to be applied for). However, there could be a bargaining party on the opposing side when the application for the determination was due to the lack of a <u>complete</u> employer bargaining side (ie there is a specified employer bargaining party (SEBP) to represent SEBP employers but no employer association was approved to represent non-SEBP employers).
26O	Application to fix terms of proposed agreement: bargaining sides' inability to agree.	Section 234 enables a bargaining side to apply for a determination to fix the terms of a proposed agreement in specified situations (eg a bargaining stalemate or two failed ratifications).
26P	Statement in reply to application to fix terms of a proposed agreement when bargaining sides unable to agree.	This statement of reply can be used by the opposing bargaining side to respond to the application for the terms to be fixed.
26Q	Application for non-binding recommendation for proposed variation or proposed agreement.	Section 194 and 231 allow a bargaining side to apply for a non-binding recommendation on the terms of a proposed variation or a proposed agreement.
26R	Statement in reply to application for non-binding recommendation for proposed variation or proposed agreement.	This statement of reply can be used by the opposing bargaining side to respond to an application for a non-binding recommendation.
26S	Submission for compliance assessment.	Section 143 requires the bargaining sides to jointly submit the proposed agreement to the Authority for a compliance assessment once bargaining for the proposed agreement is complete. The Authority will also assess if there

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		is a coverage overlap with an existing FPA (and if so, determine which agreement provides better terms overall). There is no statement in reply form as this submission is made by both bargaining sides (meaning there is no respondent).
26T	Submission for determinations relating to coverage overlap.	Under section 164, before the CE of MBIE can issue a FPA notice they must check whether there is a coverage overlap that wasn't able to be identified earlier. If the CE considers a coverage overlap may exist, then the bargaining sides are required to submit the proposed agreement to the Authority to determine if there is a coverage overlap (and if so, determine which agreement provides better terms overall). There is no statement in reply as this submission is made by both bargaining sides.
26U	Application for determination in relation to other matters.	Section 229 and 230 allow parties to apply to the Authority on a wide range of FPA disputes. For example, a dispute about the coverage of an FPA, whether a proposed agreement should include a 'must-discuss' topic, or whether an employer is complying with the terms of an FPA.
26V	Statement in reply to application for determination in relation to other matters.	This statement of reply can be used by the other party involved in the dispute with the applicant (eg an employer, other bargaining parties, other bargaining side etc).

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Annex B: Employment Relations Authority fees for new FPA-related forms

Form	Fee (excluding GST)
Lodging an application to fix terms of proposed agreement: absence of bargaining side [<i>Regulation 26L</i>].	No fee
Lodging a statement in reply to application to fix terms of fair pay agreement in absence of bargaining side [<i>Regulation 26N</i>].	No fee
Lodging an application for the Authority to fix the terms of a proposed agreement: bargaining sides inability to agree [<i>Regulation 26O</i>].	\$62.22
Lodging a statement in reply to application to fix terms of a proposed agreement when bargaining sides unable to agree [<i>Regulation 26P</i>].	No fee
Lodging an application for a non-binding recommendation for a proposed agreement or a proposed variation under the <i>Fair Pay Agreements Act 2022</i> [<i>Regulation 26Q</i>].	\$62.22
Statement in reply to application for non-binding recommendation for proposed variation or proposed agreement [<i>Regulation 26R</i>].	No fee
Lodging a submission for compliance assessment [<i>Regulation 26S</i>].	No fee
Lodging a submission for determinations relating to coverage overlap [<i>Regulation 26T</i>].	No fee
Lodging an application for a determination in relation to other matters under the <i>Fair Pay Agreements Act 2022</i> [<i>Regulation 26U</i>].	\$62.22
Lodging a statement in reply to application for determination in relation to other matters [<i>Regulation 26V</i>].	No fee

Annex C: New forms included in the Employment Court Regulations

Regulation	Form	Relevant Employment Court function in the Act
13B	Statement of claim to challenge determination of Authority under <i>Fair Pay Agreements Act 2022</i> .	Clause 16 of Schedule 3 enables a party that is dissatisfied with the Authority’s determination to elect to have the matter heard by the Employment Court (noting, clause 17 of Schedule 3 then limits when such a challenge can be made in relation to a determination that fixed the terms of a proposed agreement)
65A	Application for stay of proceedings under <i>Fair Pay Agreements Act 2022</i> .	An application for a stay of proceedings may be made in relation to an election (to challenge a determination of the Authority) made under clause 16 of Schedule 3.

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Annex D: Employment Court Fees – GST exclusive figures

Form	Current figure – GST inclusive	New figure – GST exclusive
1AA: Filing statement of claim in Form 1AA.	\$204.40 ⁴	\$177.78
1: Filing statement of claim in Form 1.	\$200.00	\$177.78
1A (New): Filing a statement of claim to challenge determination of Authority under the <i>Fair Pay Agreements Act 2022</i> ⁵ .	\$200.00	\$177.78
2: Filing statement of claim in Form 2.	\$300.00	\$266.67
2A: Filing application for leave to serve statement of claim on overseas party.	\$200.00	\$177.78
3: Filing application for special leave to remove proceedings to Employment Court.	\$200.00	\$177.78
4: Filing application for rehearing.	\$300.00	\$266.67
5: Filing challenge to objection to disclosure.	\$100.00	\$88.89
6: Filing application for verification order.	\$100.00	\$88.89
7: Hearing fee, for each half-day or part thereof after the first day.	\$245.00	\$217.78

Amending the fees to be GST exclusive will have a very minor rounding impact on the fees that the Employment Court currently charges. The Employment Court has already adjusted the fees that it charges to reflect the increase in GST. However, including the GST exclusive figure in the regulations would require the figure specified in the regulations to be rounded to two decimal places. As a result, when the 15 percent GST is added to this figure, the fees for forms 1AA, 1, 2A, 3, and 7 in the *Employment Court Regulations 2000* will need to increase by one cent.

Note: There is no fee for the new form “Application for stay of proceedings under Fair Pay Agreements Act 2022”, as there is no fee currently charged for an application for a stay of proceedings in Schedule 3 of the *Employment Court Regulations 2000*.

⁴ This form was added in 2011 so includes 15 percent GST. However, it should have been included as \$204.44 as it is meant to be the same as the fee for Form 1 (but with 15 percent GST included). Therefore, the proposed GST exclusive figure for Form 1AA is based on the GST exclusive figure for Form 1 (\$177.78), rather than removing 15 percent from the current fee for Form 1AA (which would result in \$177.77).

⁵ This form is equivalent to Form 1, so the fee is consistent with the fee for Form 1.