



## BRIEFING

### Fair Pay Agreements Cabinet paper: Approval for public interest test criteria details and delegated authority for key regulations

<b>Date:</b>	3 August 2022	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0386

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations &amp; Safety</b>	<b>Agree</b> to lodge the Cabinet paper <i>Fair Pay Agreements: Approval for public interest test criteria details and delegated authority for key regulations</i> with the Cabinet Office by 10am, Thursday 4 August 2022	4 August 2022

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	✓
Oscar Cornfield	Senior Policy Advisor	04 913 3929	

#### The following departments/agencies have been consulted on the attached Cabinet paper

The Department for Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade, the Treasury, Te Puni Kōkiri, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Women, Public Service Commission, Department of Corrections, Ministry of Social Development, Ministry of Education, Inland Revenue, Ministry of Transport, New Zealand Police, Oranga Tamariki, Ministry for the Environment, Office of the Privacy Commissioner, the Office for Disability Issues, New Zealand Defence Force, New Zealand Transport Authority, Ministry of Health and Parliamentary Counsel Office.

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 Withdrawn           |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

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This briefing provides you the Cabinet paper entitled *Fair Pay Agreements: Approval for public interest test criteria details and delegated authority for key regulations* for your final review and lodgement with the Cabinet Office by 10am on Thursday 4 August 2022.

### Recommended action

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

- a **Agree** to lodge the Cabinet paper *Fair Pay Agreements: Approval for public interest test criteria details and delegated authority for key regulations*, by 10am, Thursday 4 August 2022.

*Agree / Disagree*

Beth Goodwin  
**Manager, Employment Relations Policy**  
Labour, Science and Enterprise, MBIE

03 / 08 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

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## Background

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1. On 18 July 2022, you agreed to circulate the draft Cabinet paper entitled *Fair Pay Agreements Bill: Approval for public interest test criteria details and delegated authority for key regulations* for Ministerial consultation. The paper sought:
  - agreement to proposed details in regulations for evidencing the public interest test criteria; and
  - delegated authority for you to approve the policy for the two additional Fair Pay Agreements (FPA) regulations that are required shortly after the FPA Bill (the Bill) commences.
2. This paper complements two recent FPA Cabinet papers which sought agreement to make policy changes to the Departmental Report and to refer the “backstop” Slip of Amendments to Select Committee.
3. Decisions on the FPA regulations are required now, alongside the ongoing work on the Bill, to ensure that the regulations required to support the initiation stage of the FPA process can be implemented in time for when the Bill commences, which is one month after Royal Assent.

## Approval to lodge the regulations Cabinet paper

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4. We seek your approval to lodge the finalised Cabinet paper *Fair Pay Agreements: Approval for public interest test criteria details and delegated authority for key regulations* attached as Annex One. Changes made in response to comments from agency and Ministerial consultation are discussed below and presented in Annex Two (the revised track Cabinet paper).

## Changes to one of the regulation policy proposals

5. We have removed from the Cabinet paper the proposal to require an initiating party (eg a union) to use its best endeavours to ensure that the evidence provided in support of a public interest test application is representative of the proposed covered workforce. After consulting Parliamentary Counsel Office (PCO), we now consider that the best approach is to specify this in the primary legislation. This requirement will instead be recommended as a technical change to the Bill via the Departmental Report rather than recommended as policy to be implemented in regulations. We consider that this falls within your delegation from Cabinet [CAB-22-MIN-0291, paragraph 36 refers].

## Consultation of the Cabinet paper

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6. The paper has been consulted with your ministerial colleagues and with the following agencies: the Department for Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade, the Treasury, Te Puni Kōkiri, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Women, Public Service Commission, Department of Corrections, Ministry of Social Development, Ministry of Education, Inland Revenue, Ministry of Transport, New Zealand Police, Oranga Tamariki, Ministry for the Environment, Office of the Privacy Commissioner, the Office for Disability Issues, New Zealand Defence Force, New Zealand Transport Authority, Ministry of Health and Parliamentary Counsel Office.

## Ministerial consultation

7. Aside from two questions raised by the Prime Minister’s Office (PMO), there were no substantive comments received from Ministerial consultation.

8. PMO recommended that the paper acknowledge that part of the proposed details for the *'long or unsocial hours, or contractual uncertainty, that is not adequately compensated'* will disproportionately capture certain industries such as hospitality. We have noted this in paragraph 26, specifying the example of restaurants, while also explaining that this part of the criteria description intends to only capture the more severe situations of people working unsocial hours (ie that they are doing so while in full-time equivalent work and that most of those hours fall at unsocial times).
9. In addition, we provided you with information to pass on to PMO on the timeframes for confirming the first tranche of FPA regulations to illustrate why a waiver to the 28-day rule is required.

Legal professional privilege



### Other agency comments

13. There were no comments (aside from PCO) raised by agencies which resulted in material changes to the Cabinet paper. Of note, Ministry of Justice, Police and Department of Prime Minister and Cabinet responded with no comments. Several general comments were raised by other agencies, described below.
14. Ministry for Pacific Peoples (MPP) noted that Pacific communities were disproportionately concentrated in jobs that are low-skilled and low-paid and anticipated that they would stand to disproportionately benefit from the establishment of the FPA system in New Zealand. They supported the additional specification to the public interest test. MPP raised a question as to the extent that the proposed criteria for *'lack of pay progression'* captures situations where employees may have been stagnant in roles for many years, have not acquired any further qualifications or training, but may possess institutional business knowledge that adds value to the role. In practice, these situations will be captured as the available data at a granular level is only sufficient to capture pay differences between new starters and experienced workers in the same role or occupation.
15. The Office of the Privacy Commissioner (OPC) did not raise any privacy concerns given that the available data that MBIE will be using for statistical analysis of public interest test applications will not include any identifiable information (ie sample sizes will be based on ANZSCO and ANZSIC codes using Statistics New Zealand data and the data will not include any information which identifies individuals).

16. The Public Service Commission (PSC) noted that some public sector or publicly funded workforces – such as parts of the early childhood education, or some low paid health roles – may be able to satisfy the public interest test, rather than the representation test, and therefore may bring applications for FPAs through this test once the scheme is operational.
17. Te Puni Kōkiri noted that the criteria details are well argued and should enable the chief executive of MBIE to make the necessary judgements, when making decisions on proposed FPAs. They also noted that the test criteria will be crucial for Māori, including wāhine Māori, particularly in low paid and insecure work, especially in the implementation phase of FPAs.

## **Regulatory impact analysis**

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18. Treasury has approved an exemption from the Regulatory Impact Assessment (RIA) requirements for the public interest test criteria details in regulations, on the grounds that they have no or only minor impacts on businesses, individuals and not-for-profit entities, in the context of the broader set of policy changes supported by the previous RIA.
19. As part of agency consultation, Treasury confirmed they had no further comments on the paper.

## **Next steps**

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20. Once you have reviewed the Cabinet paper, we recommend you lodge both papers with the Cabinet Office by 10am, Thursday 4 August 2022.
21. This paper will be considered by DEV on 10 August 2022. Subject to decisions at DEV, Cabinet ratification will occur on 15 August 2022. We will provide you with talking points to support the DEV meeting on Monday 8 August.
22. Subject to Cabinet confirmation, we will prepare drafting instructions to PCO for the public interest test criteria descriptions and the other regulations that need to be in place by the time the FPA Bill commences.
23. As is normal, the Cabinet paper will be proactively released within 30 working days. We will discuss with your office whether any communications support will be required.

## **Annexes**

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Annex One: Cabinet paper – Fair Pay Agreements Bill: Approval for public interest test criteria details and delegated authority for key regulations

Annex Two: Tracked change version of the Cabinet paper – Fair Pay Agreements Bill: Approval for public interest test criteria details and delegated authority for key regulations