



BRIEFING

Fair Pay Agreements – Draft Cabinet paper for regulations

Date:	14 July 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-0151

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations & Safety	Agree to circulate the attached Cabinet paper for Ministerial consultation.	19 July 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	Privacy of natural persons	✓
Oscar Cornfield	Senior Policy Advisor, Employment Relations Policy	04 913 3929		
Latisha Kumar	Policy Advisor, Employment Relations Policy	04 830 7203		

The following departments/agencies have been consulted
N/A

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Withdrawn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 the following draft Cabinet paper for your review and to forward to your ministerial colleagues for consultation:

- *Fair Pay Agreements Bill: Approval for public interest test criteria details and delegated authority for key FPA regulations*

Recommended action

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

- a. **Agree** to circulate the draft Cabinet paper to your ministerial colleagues on 19 July 2022 seeking their comments and feedback by **9.00am, 2 August 2022**

Agree / Disagree

Clarifying the scope of your delegated authority to approve the content and form of FPA terms

- b. **Agree** to include 'training and development requirements' within the purview of the delegated authority you are seeking for designing regulations to specify the content and form of FPA terms.

Agree / Disagree

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

14 / 7 / 2022

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

1. This briefing attaches a draft Cabinet paper for your approval and for ministerial consultation.
2. The *Fair Pay Agreements Bill: Approval for public interest test criteria details and delegated authority for key FPA regulations* Cabinet paper seeks:
 - agreement to proposed details in regulations for evidencing the public interest test criteria; and
 - delegated authority for you to approve the two additional Fair Pay Agreements (FPA) regulations that are required shortly after the FPA Bill (the Bill) commences.
3. Because the public interest test is only specified by high-level criteria such as 'low pay' and 'little bargaining power' in the Bill, the Cabinet paper seeks agreement to proposed details in regulations on how to evidence the criteria. These criteria alone are not sufficient to support the judgement of the Chief Executive of MBIE on public interest test applications, therefore additional details in regulations are necessary.
4. The paper also seeks delegated authority to approve two additional FPA regulations so that they can proceed straight to drafting once the design has been approved. These regulations are essential for supporting the bargaining and ratification stages of the process and must be enacted by April 2023, in time for the first FPA bargaining.
5. To meet the commencement date, we propose that the essential FPA regulations are implemented in tranches. The first tranche of regulations must be enacted by the commencement date of the substantive provisions in the Bill, as they will support the initiation of FPAs. The most significant of the Tranche 1 regulations is the public interest test criteria details outlined in the draft Cabinet paper.

Change to the Bill that impacts on regulations

6. You agreed to a change in the Bill (2122-4414 refers) which has a minor impact on the scope of the delegated authority sought to approve regulations that specify the content and form of FPAs terms. This was that the FPA terms '*training and development arrangements*' and '*leave entitlements*' are to be switched from the 'mandatory to discuss' topic set to the 'mandatory to include' topic set.
7. All the 'mandatory to include' FPA topics must be specified in the prescribed form, including topics such as '*governance arrangements*' that do not have a specified formulation. These terms only need a prescribed form so that the CE knows that bargaining parties have actively agreed that the terms meet the requirements for an FPA.
8. For avoidance of doubt and to clarify the scope of your delegated authority sought, we recommend that you agree to include '*training and development requirements*' within the purview of the delegated authority you are seeking for designing regulations that specify the content and form of FPA terms. This clarification is not required for '*leave entitlements*' since it was already a Minimum Entitlement Provision and therefore already specified in the Bill as one of the terms which requires a prescribed form (in regulations).
9. In anticipation of your approval this change has been reflected in the attached Cabinet paper.

Regulatory Impact Assessment

10. 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.

Proactive release

11. The Cabinet 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.

Next Steps

12. As agreed with your office, we will be circulating the Cabinet paper for departmental consultation concurrent with your Ministerial consultation. This is to ensure the tight timeframes related to the whole FPA project are maintained.
13. Once you have reviewed the Cabinet papers, we suggest you circulate them to your ministerial colleagues and seek their feedback by **9.00am, 2 August 2022**.
14. This will enable us to incorporate their comments in time to lodge the paper on 4 August 2022. It will be considered by Cabinet Economic Development Committee on 10 August 2022, and Cabinet on 15 August 2022.

Annexes

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