



BRIEFING

Fair Pay Agreements – Draft Cabinet papers on policy changes to the Bill and the backstop for review

Date:	8 July 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-0020

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations & Safety	Agree to the recommendations in the paper.	11 July 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone	Privacy of Natural Persons	1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611		✓
Morgan Whiterod	Graduate Policy Advisor	04 896 5875		

The following departments/agencies have been consulted
N/A

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 Withdrawn |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

This briefing provides the following draft Cabinet papers for your review and to forward to your ministerial colleagues for consultation:

- *Fair Pay Agreements: Approval to refer the “backstop” Supplementary Order Paper to select committee; and*
- *Fair Pay Agreements Bill: Policy changes for Departmental Report.*

For your information, we have also attached:

- Regulatory Impact Analysis entitled *Fair Pay Agreements Regulatory Impact Assessment update on limiting judicial review of bargaining parties’ decisions; and*
- The Parliamentary Counsel Office’s (PCO) initial draft of the Backstop Supplementary Order Paper

Recommended action

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

- a. **agree** to the attached draft Cabinet papers;

Agree/Disagree

- b. **agree**, subject to recommendation a. above, to circulate the draft Cabinet papers to your ministerial colleagues for their comments and feedback by

- **9.00am, 19 July 2022** for the backstop Cabinet paper; and,
- **9.00am, 20 July 2022** for the policy Cabinet paper.

Agree/Disagree

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

8 / 07 / 2022

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

1. This briefing attaches two Cabinet papers for your approval and for Ministerial consultation.
2. The first, *Fair Pay Agreements: Approval to refer the “backstop” Supplementary Order Paper to select committee* (the backstop paper), is a LEG-style paper, seeking approval to the SOP which PCO has drafted to give effect to the backstop policy, and to send it to the Education Workforce Committee (the Select Committee) as previously agreed.
3. The second, *Fair Pay Agreements Bill: Policy changes for Departmental Report* (the policy paper), seeks approval to policy changes arising from submissions to the Select Committee and from matters officials have raised with you.
4. A copy of the draft backstop SOP is also attached for your information. Please note that if you wish to share this further, we will need to get specific permission from MBIE’s Chief legal advisor on behalf of the Attorney General.

Decisions still pending are drafted into the policy Cabinet paper

5. There are a few outstanding decisions for proposals in the policy Cabinet paper that require your confirmation. These are identified using square brackets and comment boxes in the version attached. If you agree with those proposals, we can provide a clean copy on Monday 11 July for your Ministerial consultation.
6. The backstop Cabinet paper outlines some decisions in its Annex 1 made during drafting under your delegation from Cabinet, relating to some scenarios that may occur during the window when the initiating side may apply for a backstop. These decisions were made by officials during drafting as they were considered low-level, and were based on your stated preference that the FPA is bargained where possible. Unless we hear otherwise from you, we will read your acceptance of the Cabinet paper to be acceptance of the decisions identified in it.

Regulatory impact analysis

7. For the backstop Cabinet paper, there is no requirement for a Regulatory Impact Statement (RIS) as there have been no substantial policy changes since the policy was considered by Cabinet in March 2022.
8. For the policy Cabinet paper, Treasury’s Regulatory Impact Analysis Team has determined that most of the additional policy changes proposed are exempt from providing a RIS as they fall within context of the broader set of policy changes supported by the previous RIS: (“Impact Statement: Fair Pay Agreements”; CAB-21-MIN-0126 refers).
9. An addendum to the previous RIS has been produced to reflect the proposed judicial review policy changes. A draft of this addendum is attached for your information in **Annex Three**. MBIE’s Regulatory Impact Analysis Review Panel is currently reviewing it. We expect to get feedback on whether it meets the regulatory impact requirements on or before 21 July 2022.

Agency consultation

10. The backstop Cabinet paper has been circulated for departmental consultation on 7 July 2022. We have requested comments back from agencies by 14 July 2022.
11. We intend to send the policy Cabinet paper to agencies for comments on 11 July 2022 seeking feedback by 15 July 2022.
12. The Ministry of Justice is undertaking the NZBORA compliance assessment of the backstop proposals. The BORA compliance assessment officially began on 4 July 2022 and we expect it to be complete by 18 July 2022.
13. We will reflect agency comments and feedback on the papers in the next versions we forward to you. Unless any major issues are raised, we will likely wait until your ministerial consultation has concluded and incorporate all changes from both consultations at the same time.

Next Steps

14. Once you have reviewed the Cabinet papers, we suggest you circulate them to your ministerial colleagues and seek their feedback by:
 - **9.00am, 19 July 2022** for the backstop Cabinet paper; and,
 - **9.00am, 20 July 2022** for the policy Cabinet paper.
15. This will enable us to incorporate their comments prior to lodging the papers with the Cabinet Office by 10.00am, Thursday 21 July 2022 (backstop paper) and 10.00am, Friday 22 July 2022 (policy paper).

Process for the backstop paper

16. The backstop paper will be considered at the Cabinet (CAB) meeting on 25 July 2022. Please note that Cabinet will be acting as the Cabinet Legislation Committee (LEG) for referring the backstop SOP to the select committee.
17. We propose that you write to the select committee Chair on 25 July 2022 (after Cabinet meets) requesting that the committee considers incorporating the SOP into the version of the Bill it reports back to Parliament in October. We will prepare a letter for your review prior to this.
18. To assist select committee's understanding and reading of the backstop SOP, if time allows we propose to prepare a 'plain English' explanation of the proposed changes to the Bill resulting from the SOP to assist committee members. We would append this to the letter to the Chair noted above and would provide you a copy of this explanation along with the letter for your review. However, our top priority is to finalise the departmental report, which may need to be at the expense of the plain English summary.

Process for the policy paper

19. The policy paper will be considered at the Cabinet Economic Development Committee (DEV) meeting on 27 July 2022. Subject to decisions at DEV, Cabinet ratification would occur on 1 August 2022. We will ensure that Cabinet's decisions are incorporated in MBIE's

Departmental Report to the committee that is due for submission at midday on Monday 8 August 2022.

20. Due to tight deadlines, the Departmental Report is being prepared on the assumption that the SOP will be incorporated into the Bill and that these outstanding policy decisions will be agreed, both by Cabinet and the Committee. We will advise you further on any implications for the Bill and its passage through the House should the SOP not be accepted by the Committee or if any of the proposals are not agreed.

Annexes

Annex One: Fair Pay Agreements: Approval to refer the “backstop” Supplementary Order Paper to select committee

Annex Two: Fair Pay Agreements Bill: Policy changes for Departmental Report

Annex Three: Draft Fair Pay Agreements Regulatory Impact Assessment update on limiting judicial review of bargaining parties’ decisions

Annex Four: PCO’s initial draft of the Backstop Supplementary Order Paper