



## BRIEFING

### Fair Pay Agreements Bill – Draft Departmental Report

<b>Date:</b>	28 July 2022	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0244

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations &amp; Safety</b>	Provide feedback on the draft Departmental Report and agree to rescind your decision to remove all references to specific entities in clause 19(2) of the Schedule 3 of the Bill.	1 August 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	Privacy of natural	✓
Susan Jacobs	Policy Advisor	04 897 5124		

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 Withdrawn           |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

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Provides you with a draft version of the Fair Pay Agreements Bill (the Bill) Departmental Report (the Report) for your feedback ahead of the Report being provided to the Education and Workforce Select Committee (the Committee).

The briefing also seeks your agreement to rescind your decision to remove all references to specific entities in clause 19(2) of the Schedule 3 of the Bill relating to applications for judicial review.

#### Recommended action

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

- a **Note** the content of the Report and provide feedback by Monday 1 August 2022. *Noted*
  
- b **Note** that in the content of judicial review limitation options, you previously agreed to remove all references to specific entities in clause 19(2) of Schedule 3, except the Employment Relations Authority, an officer of the Authority, or the Chief Executive. *Noted*
  
- c **Agree** to rescind your decision to remove all references to specific entities in clause 19(2) of Schedule 3. *Agree / Disagree*
  
- d **Agree** to delegate authority to officials to work with Parliamentary Counsel Office (PCO) and Crown Law to ensure that clause 19(2) of Schedule 3 achieves the policy intent. *Agree / Disagree*

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

28 / 07 / 2022

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

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## Draft Departmental Report

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1. The Report sets out feedback received from submissions on the Bill and officials' recommended response to submissions, as well as additional changes proposed by the Ministry of Business, Innovation and Employment (MBIE). This includes policy changes previously agreed by you and that are being discussed at Cabinet on 1 August 2022.

### **The Report is structured across six main chapters and two appendices**

2. The report is structured as follows:
  - The Introduction sets out the structure of the Report and includes initial information on who submitted on the Bill.
  - Chapter 1 provides a summary of all the recommended changes from submissions and additional changes proposed by MBIE, including the policy changes agreed by you.
  - Chapter 2 outlines cross-cutting themes from submissions that do not directly relate to a provision in the Bill.
  - Chapter 3 provides summaries and responses to some of the more substantive feedback received from submissions, including areas of recommended change.
  - Chapter 4 provides summaries and responses to submissions made on each clause of the Bill, including areas of recommended change (the clause-by-clause analysis).
  - Chapter 5 outlines MBIE's recommended additional changes.
  - Chapter 6 outlines MBIE's responses to outstanding questions from the Committee.
  - Two appendices contain the list of submitters and feedback that was outside of the policy scope of the Bill.


### **The Report is still in a draft format**

3. Due to size of the task and tight timeframe, the Report is still in a draft format and includes the following caveats, which are all noted in the Report:
  - a. It has not yet been fully proofread or reviewed, particularly chapter 4 and 5.
  - b. Officials are still working through MBIE's additional amendments (chapter 5), with some of these being subject to agency consultation and further refinement with legal colleagues.
  - c. Aspects of the report relating to judicial review changes are still being finalised, as outlined below.

## Judicial review change

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4. In our briefing on judicial review limitation options [briefing 2122-4893 refers] we mentioned that clause 19(2) of Schedule 3 in the Bill lists entities who exercise a statutory power of decision, including bargaining sides, in the context of describing when judicial review cases should be heard in the Employment Court.

5. We advised that reference to bargaining sides should be removed from the Bill because it is likely to influence a court that bargaining parties' decision-making is judicially reviewable. You agreed.
6. Legal professional privilege  

7. To avoid locking in wording that is unhelpful, we now recommend that rather than specifying the nature of the change to clause 19(2), as you had earlier agreed, the Departmental Report should refer to drafting clause 19(2) to give effect to the policy intent.
8. We therefore seek your agreement to rescind your decision to remove all references to specific entities in clause 19(2) of Schedule 3. We also seek your delegated authority to officials to work with PCO and Crown Law to ensure that clause 19(2) of Schedule 3 achieves the policy intent.
9. The proposed wording in recommendation 10 of the Report (page 67) and in the response to New Zealand Council of Trade Union's submission in Chapter 4 relating to Schedule 3, clause 19(2) (page 195) have been amended to reflect the above.

## **Officials are seeking your comment by Monday 1 August 2022**

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10. Officials seek your feedback on the Report by Monday 1 August 2022, ahead of a final version being provided to you the following week. As the Report is quite long, we suggest you focus on the following sections:
  - a. The changes recommended to the Bill – outlined in Chapter 1.
  - b. The discussion on broad feedback across the Bill – outlined in Chapter 3.
  - c. Responses to Select Committee questions – outlined in Chapter 6.

### **Specific areas to note**

11. Some points made by submitters during consultation have not been included as recommended amendments to the Bill. These include issues that you did not prioritise for further advice when we discussed the issues raised with you after public consultation closed in late May 2022. In the responses set out in chapter 3 and chapter 4, we have suggested explanations for why particular issues have not been addressed or points that have not been adopted – however, as we didn't discuss your reasons for not prioritising some matters, these may not reflect your actual views.
12. We seek your feedback on our explanations, in particular regarding:
  - a. the Government's Treaty obligations under the Bill (page 29)
  - b. the threshold for initiation (page 37)
  - c. adding further specified employers (page 49).
13. The Education and Workforce Committee, in its meeting on 27 July 2022, requested that MBIE advisors include in the Report a flowchart diagram showing how the backstop determination process will work within the FPA system. We are preparing this diagram to include as an annex to the final Report that will be forwarded to you next week.

## **Next steps**

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14. You will receive a final version of the Report on Thursday 4 August 2022 ahead of it being submitted to the Committee on Monday 8 August 2022 for consideration.
15. MBIE officials are presenting the Report to the Committee on Wednesday 10 August 2022.

## **Annexes**

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Annex One: Draft Departmental Report