



AIDE MEMOIRE

Fair Pay Agreements Bill: Draft legislative statement and proposed talking points for second reading

Date:	29 September 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-1087

Information for Minister(s)
Hon Michael Wood Minister for Workplace Relations and Safety

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

Noted

Seen

See Minister's Notes

Declined

Needs change

Overtaken by Events

Withdrawn

Comments



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Purpose

This aide memoire provides three items for your review by **Thursday 6 October 2022**:

- Draft Fair Pay Agreements Bill legislative statement,
- Proposed talking points for the second reading of the Fair Pay Agreements Bill,
- Proposed content for the Fair Pay Agreements Bill House pack.

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

29/09/2022

We seek your feedback on the legislative statement

1. The Fair Pay Agreements Bill is scheduled to have its second reading in the week commencing 17 October 2022. In preparation, we have prepared a draft legislative statement for your review (**Annex One**).
2. The legislative statement contains technical details about the Bill and changes made to the Bill by the Education and Workforce Committee. It supplements the Bill's explanatory note. It also allows other parties to understand the Bill in more detail and enables you to focus on the high-level principles in your second reading speech. The novel information in this statement are the changes made to the Bill by the Education and Workforce Committee.
3. Your office needs to submit the statement to the Clerk of the House of Representatives Office and the Leader of the House's office no later than 11am on the date of the second reading.

Talking points for the second reading of the Bill

4. We have also attached proposed talking points for the second reading speech (refer to **Annex Two**). They primarily focus on the purpose of the Bill and changes arising from Select Committee. In particular, we seek your feedback on whether you want to outline more of the Committee's changes in your speech.

Proposed content for the House pack

5. We have also attached proposed contents pages for the House packs for the remaining stages (**Annex Three**). As you requested, we have based this on the Screen Industry Workers Bill House pack for Committee of the Whole House stage.
6. We seek your direction on anything additional you want included, or anything listed that you will not need. We suggest not including the information in tab 6 on the 2019 public consultation – we suggest this is unlikely to be useful.

We seek your feedback on these documents

7. We seek your feedback on the documents in the annexes by 6 October 2022. This will allow us to make changes in time for the second reading speech which is scheduled for the week commencing 17 October.

Next steps

8. Following your feedback, we will finalise the **legislative statement** and send it to your office, for your office to lodge with the House office. The Leader's office manages the circulation. Legislative statements must be circulated to all party leaders, whips or relevant spokespersons no later than 11am on the day that the reading is expected to occur. The legislative statement will be published on Parliament's website and linked to the Bill and second reading speeches.
9. If you have feedback on the **proposed talking points**, we will revise these and send a final set of talking points to your office.
10. Following your feedback on the **House pack** contents pages, we will forward the House pack for second reading to your office.

Annexes

Annex One: Draft legislative statement for Fair Pay Agreements Bill

Annex Two: Proposed talking points for Fair Pay Agreements Bill second reading

Annex Three: Fair Pay Agreements Bill second reading House pack

Annex One: Draft legislative statement for Fair Pay Agreements Bill

Annex Two: Proposed talking points for Fair Pay Agreements Bill second reading

Introduction

- *[Placeholder – precise wording on seeking a motion for the second reading will be provided to your office by the House Office].*
- I present to the House a legislative statement on the Fair Pay Agreements Bill.
- I move that the Fair Pay Agreements Bill be now read a second time.

Acknowledgments

- I would like to thank the Education and Workforce Committee for its consideration of the Bill. I would also like to acknowledge those who made written and oral submissions.
- The Bill received just under 1800 submissions. Of these submissions, just over 1200 were from employees. This high number illustrates the importance of this legislation to workers across Aotearoa New Zealand.

Context of the Bill

Background

- New Zealand's labour market and our current employment system performs well in creating jobs, ensuring high rates of participation, and delivering some elements of job quality.
- However, the strengths in our labour market mask entrenched weaknesses such as a rise in jobs with low pay or inadequate working conditions.
- Over the past 30 years, many workers have missed out on the economic gains accrued and certain groups experience inequitable employment outcomes.
- There is a significant gap in our current employment system. It does not enable workers to bargain collectively at the sector level.
- Individual bargaining can be insufficient to improve working terms and conditions. As a result, we are seeing a persistent lack of bargaining power for workers in some sectors.
- The Fair Pay Agreement system addresses two fundamental issues in our labour market: the imbalance of bargaining power between workers and employers, and a race to the bottom in industries that compete heavily on cost.

The objective of the Bill

- The Bill forms a key part of the Government's commitment to creating a more productive and inclusive economy, where the benefits of economic growth are more widely shared.
- The FPA system aims to improve labour market outcomes by enabling employers and employees to bargain collectively for industry or occupation-wide minimum employment terms.
- By increasing bargaining co-ordination, I intend for FPAs to improve outcomes for vulnerable employees and help grow the incomes of New Zealand workers. This is especially for Māori, Pacific peoples, young people, and people with disabilities, who are over-represented in occupations which could benefit from an FPA.

Working Group decisions from 2018

- I designed the system in line with what was recommended by the Fair Pay Agreements Working Group report.

Changes from Select Committee

- The Bill received just under 1,800 submissions. The majority supported the Bill. The Committee also heard around 29 hours of oral hearings of evidence from submitters.
- Submitters who supported the Bill noted that it would improve labour market outcomes and help address current systemic failures. Many individual employees saw it was a way to achieve minimum standards, improve working conditions, improve inequality, and ensure better recognition for work.
- I am happy that the majority of the Committee recommended the Bill be passed with amendments.
- I am supportive of the amendments made by the Committee. The key changes are as follows.

The Backstop process

- A key amendment made by the Committee was the inclusion of a “backstop” determination process.
- The FPA system relies on union and employer representatives to bargain collectively for minimum employment terms. Even if the threshold has been met to initiate bargaining, the absence of willing and suitable representatives on one side would prevent bargaining.
- I wrote to the Committee proposing a change to address this, and the Committee consulted the public on that proposal, alongside the Bill.
- Following this, the Committee agreed to incorporate the backstop and it has been reflected in the version the Committee reported back.
- The new determination process will support the FPA system if one side is not represented in bargaining. This will allow an FPA to be fixed by an independent body, namely the Employment Relations Authority, when there is no representative on one bargaining side.

Other key changes from the Committee

- The definition of coverage was amended to give greater clarity to employers and employees, and the rules to resolve overlaps were also clarified.
- Certain mandatory requirements such as the content of an FPA and the Authority’s role when fixing terms of an FPA, were changed. Additionally, the obligation on the initiating union to notify others of an FPA, was clarified as a ‘best endeavours’ obligation.
- The criteria for the public interest test were amended so that it can only be applied if the employees within coverage receive low pay and meet one of the remaining three criteria. The other criteria include little bargaining power, lack of pay progression, or not being adequately paid for reasons such as long hours.
- The mandatory content of each FPA was changed to include the addition of arrangements relating to training, development and leave entitlements.

Closing comments

- Finally, I would like to take this opportunity to once again thank the members of the Education and Workforce Committee, for their work considering the Bill, and all those who have participated in consultation during the development of this Bill for their contributions.
- I am proud to commend this Bill to the House. Mister/Madam Speaker, I commend this Bill to the House.

Contents

Fair Pay Agreements Bill: Second reading

1	Speech notes
2	Legislative statement
3	Fair Pay Agreements Bill as reported from Education and Workforce Committee
4	Q&As

Reference material

5	Fair Pay Agreement Working Group (2018)	<ul style="list-style-type: none"> • Cabinet paper: <i>Improving the Employment Relations and Standards System: Fair Pay Agreements</i> • Fair Pay Agreement Working Group recommendations
6	Public consultation on design of Fair Pay Agreement system (2019)	<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements: Discussion Paper</i> • Discussion paper • MBIE summaries of submissions
7	Policy approval for Fair Pay Agreements Bill (2021)	<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements: Approval to draft</i> • MBIE regulatory impact analysis
8	Introduction of Fair Pay Agreements Bill (2022)	<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements Bill: Approval for Introduction</i> • Departmental disclosure statement • MBIE regulatory impact analysis (expansion of Labour Inspectorate powers) • MOJ BORA vet
9	Policy approval for backstop (2022)	<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements: Backstop where one side is not represented</i> • MBIE regulatory impact analysis (backstop) • Parliamentary paper on backstop
10	Consideration by Education and Workforce Committee (2022)	<ul style="list-style-type: none"> • Initial briefing to Education and Workforce Committee

		<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements: Approval to refer the backstop slip of amendments to select committee</i> • Cabinet paper: <i>Fair Pay Agreements: Policy changes for departmental report</i> • MBIE regulatory impact analysis (judicial review) • Departmental report (including summary diagrams)
11	Regulations (2022)	<ul style="list-style-type: none"> • Cabinet paper: <i>Fair Pay Agreements: Approval for public interest test criteria details and delegated authority for key regulations</i>

Contents

Fair Pay Agreements Bill: Committee stage

1	Fair Pay Agreements Bill as reported from Education and Workforce Committee	
2	Notes for committee stage	<ul style="list-style-type: none"> • Clause-by-clause notes • Index: Q&As • [Any other indices]
3	[If this exists] Supplementary Order Paper (Hon Michael Wood)	

Reference material

[same table as for second reading, with updated tab numbers]

Contents

Fair Pay Agreements Bill: Third reading

1	Speech notes
2	Legislative statement
3	Fair Pay Agreements Bill as amended during committee stage
4	Q&As

Reference material

[same table as for second reading, with updated tab numbers]