



BRIEFING

Fair Pay Agreements Bill – Final Departmental Report

Date:	4 August 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-0379

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations & Safety	Note the attached final Departmental Report for your information Agree to the recommendations	8 August 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	Privacy of natural persons	✓
Chris Pound	Principal Policy Advisor			

The following departments/agencies have been consulted
Health NZ, Ministry of Health, Public Service Commission

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 Withdrawn |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



BRIEFING

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Purpose

This briefing provides you with the final version of the Fair Pay Agreements Bill (the Bill) Departmental Report (the Report) for your information ahead of the Report being provided to the Education and Workforce Select Committee (the Committee) on 8 August 2022.

The briefing also seeks your agreement to makes changes to the Bill arising from the *Pae Ora (Healthy Futures) Act 2022* (Pae Ora Act).

Recommended action

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

- a **Note** the Departmental Report is due for submission to the Committee by midday on Monday 8 August 2022 and MBIE officials will present it to the Committee on 10 August 2022
Noted
- b **Note** that the Ministry of Health, Health New Zealand (Health NZ) and the Public Service Commission (PSC) were consulted on the changes to the FPA Bill arising from the Pae Ora Act.
Noted
- c **Agree** that the Bill be amended to remove the transitional arrangements which named the Director-General of Health as the specified employer bargaining party and instead enable Health NZ to:
 - i. be a specified employer bargaining party, or
 - ii. ask the Public Service Commissioner to act as an employer bargaining party on behalf of Health NZ (which the Commissioner would not be obliged to agree to)*Agree / Disagree*
- d **Agree** there would be no other ability for Health NZ to delegate, and no requirement on Health NZ (or on the Public Service Commissioner) to consult the Director-General when acting as employer bargaining party.
Agree / Disagree

e **Agree** that other consequential changes may be made to the Bill arising from the Pae Ora Act to give effect to the above policy intent.

Agree / Disagree



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

4 / 08 / 2022

Hon Michael Wood
Minister for Workplace Relations & Safety

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Changes to the Report since your review

1. The Report sets out feedback received from submitters on the Bill and officials' recommended response to submissions, as well as additional changes proposed by MBIE. This includes policy changes previously agreed by you and decisions agreed at Cabinet on 1 August 2022 [CAB-22-MIN-0291 refers].
2. On 28 July 2022, we provided you with a draft Report for your feedback [BN 2223-0244 refers]. Your comments have been incorporated into this version. As agreed with you at our WRS Officials meeting on 1 August, we will keep you informed when work is underway with Crown Law and PCO to amend clause 19(2) of Schedule 3 to give effect to the policy intent on judicial review limitations. This may involve changing whether/how entities are listed in the clause.
3. The Report has now been proofread and reviewed. We have made additional technical recommendations in the Report to improve the workability of the Bill. A "mark-up" version of the Report is attached to this briefing so you can identify the changes that have made relative to the previous draft. We will review the Report again before submitting it to the Committee and provide you with a final, clean version on Monday 8 August 2022.
4. We have also finalised:
 - a. MBIE's additional amendments (chapter 5), following agency consultation and further refinement with legal colleagues, and
 - b. Health NZ changes arising from the Pae Ora Act.
5. On 27 July 2022, the Education and Workforce Committee requested that MBIE advisers provide a new flowchart diagram showing how the backstop determination process will work within the FPA system. This diagram is still being prepared and will be included with the submitted Report as an annex. We will forward a copy of this diagram to your office on Monday 8 August 2022, once the Report has been submitted to the Clerk of the Committee.

Health NZ changes

6. The Pae Ora Act came into force on 1 July 2022, which reforms the structure, delivery and coordination of New Zealand's health services. The Act disestablished District Health Boards (DHBs) and transferred DHB employees to a new Crown entity, Health NZ.
7. The FPA Bill currently provides for the:
 - Director-General of Health (the D-G) to be a "specified employer bargaining party" on behalf of DHB employees, i.e. the D-G would represent DHBs in FPA bargaining for a proposed FPAs that covers DHB employees;
 - D-G to delegate the role of specified employer bargaining party to the chief executive of Health NZ (*this is in reference to the interim Health NZ when it was a departmental agency, not the Crown agent Health NZ as now established under the new Pae Ora Act*);
 - D-G to consult the chief executive of a DHB when acting as an employer bargaining party on behalf of that DHB, and the chief executive of Health NZ (*this mirrored the requirement for DHBs to consult the D-G in collective bargaining, under the NZ Public Health and Disability Act 2000*).

8. The above arrangements were intended as an interim measure until the Pae Ora Act came into force.
9. We have consulted with Health NZ, Ministry of Health, and the Public Service Commission on the proposed changes to the Bill arising from the Pae Ora Act.
10. As a result of the consultation, we recommend that the Bill be amended to remove the transitional arrangements which named the Director-General as the specified employer bargaining party. This reflects the new status of Health NZ.
11. We propose that Health NZ would be able to ask the Public Service Commissioner to act as an employer bargaining party on behalf of Health NZ (which the Commissioner would not be obliged to do). We also propose not to replace the current ability to delegate, and remove any requirement on Health NZ (or on the Public Service Commissioner) to consult with the Director-General when acting as employer bargaining party. These changes bring the health sector more into alignment with other arrangements in the FPA Bill, and are also consistent with the Pae Ora Act provisions in relation to employment relations, which do not require consultation.

Next steps

12. The Report is due for submission to the Committee by midday on Monday 8 August 2022.
13. MBIE officials are presenting the Report to the Committee on Wednesday 10 August 2022.
14. The Parliamentary Counsel Office has commenced preparing the revision tracked (RT) version of the Bill to incorporate the backstop determination process (agreed by the Committee on 27 July 2022) and will commence making the remaining changes to the Bill that are recommended by the Committee following its deliberations.
15. The Committee is scheduled to report the Bill back to the House by 5 October 2022.

Annexes

Annex One: Final Departmental Report – Mark Up (showing changes from draft)