



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Cabinet papers relating to the repeal of Fair Pay Agreements legislation	Date to be published	14 February 2024

List of documents that have been proactively released

Date	Title	Author
December 2023	Repeal of Fair Pay Agreements legislation	Office of the Minister of Workplace Relations and Safety
4 December 2023	Repeal of Fair Pay Agreements legislation CAB-23-MIN-0470 Minute	Cabinet Office
December 2023	Fair Pay Agreements Act Repeal Bill: Approval for Introduction	Office of the Minister of Workplace Relations and Safety
11 December 2023	Fair Pay Agreements Act Repeal Bill: Approval for Introduction CAB-23-MIN-0480 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet

Repeal of Fair Pay Agreements legislation

Proposal

- 1 This paper seeks agreement to repeal the Fair Pay Agreements (FPA) Act 2022 and associated regulations and seeks approval to stop the provision of grant funding to bargaining sides while the FPA legislation is being repealed.

Relation to government priorities

- 2 The Government has committed to repealing the FPA legislation by Christmas 2023 as part of the Coalition Agreement between the National Party and ACT Party.

Executive Summary

- 3 This paper seeks Cabinet's agreement to repeal the Fair Pay Agreements Act 2022, associated regulations, and any FPA-related amendments made to other Acts or regulations (FPA legislation). Drafting instructions will be issued to Parliamentary Counsel Office, and I intend to return to Cabinet to seek approval to introduce the Bill on 11 December.
- 4 Six FPAs have been initiated to date, but all are in the very early stages of bargaining. I am committed to acting quickly to remove this legislation before any FPAs are finalised and repeal becomes more complex. As such, I intend to seek a motion that the Bill be passed through all stages under urgency.
- 5 I am also seeking approval to cease the provision of funding to bargaining sides, as I do not consider it is an appropriate use of government funds given the system is being repealed.

Background

- 6 In 2022, the government introduced legislation for a FPA system, where unions and employer associations could bargain for employment terms and conditions that covered all employees in an industry or occupation. The Fair Pay Agreements Act 2022 and Fair Pay Agreements Regulations 2022 came into force on 1 December 2022.
- 7 The National Party and ACT Party have agreed in their Coalition Agreement to repeal the FPA legislation by Christmas 2023. This paper gives effect to that commitment.

Repeal of the FPA system

- 8 The National and ACT parties opposed the development and introduction of the FPA legislation at the time.
- 9 I believe that the FPA system will make our workplaces less agile, and the business environment less competitive. FPAs are a blunt tool that can be initiated by a union and a small number of workers, yet they apply to every employee and every employer within coverage.
- 10 This system removes the flexibility for employers and employees to agree terms that suit their unique situation by setting the same minimum terms and conditions for all employees within coverage, regardless of the size of the business, or the way it operates.
- 11 The FPA system undermines the flexible labour market which has been a pillar for New Zealand's economic success for the past three decades. The best way to increase the wages of workers and lower prices for consumers is to improve productivity. FPAs risk harming New Zealand's already dismal productivity growth.
- 12 The legislation came into force on 1 December 2022. Since then, six FPAs have been initiated but all are only in the early stages of bargaining; and one further application is being assessed by the Ministry of Business, Innovation and Employment (MBIE). I am committed to acting quickly to remove this legislation before any FPAs are finalised and the negative impacts are felt by the labour market.
- 13 A standard parliamentary process would increase the risk that an FPA is bargained or determined while the FPA legislation is being repealed. This would increase the complexity associated with the repeal Bill, as decisions would be needed on whether the finalised FPAs should continue once the system is repealed and subsequent changes to the Bill would be needed to reflect those decisions.

Only minor standard transitional provisions are likely to be required

- 14 As no agreements have been finalised in any industry or occupation, there are no transitional arrangements required for the FPAs that have been initiated. Once the FPA legislation is repealed, bargaining for initiated FPAs will cease as there will be no legislative mechanism to bring any agreements into force.
- 15 There may be some minor standard transitional provisions needed which will be worked through with the Parliamentary Counsel Office.

I want to retain a technical change that expressed the fees in the Employment Court Regulations in GST-exclusive form

- 16 To implement the FPA system, the Employment Court Regulations 2000 were amended to include new forms, amend relevant forms, and specify the fees for new forms, for FPA-related matters.
- 17 As part of this amendment, the fees for all forms (not just the FPA-related forms) were amended to be expressed in GST exclusive form. This was intended to avoid

confusion resulting from the figures specified in the Employment Court Regulations having become out of date because of changes to the GST rate¹. This amendment aligned with an amendment previously made to the Employment Relations Authority Regulations 2000 to express the Authority's fees in GST-exclusive form.

- 18 In repealing the FPA system, I consider the technical change made to how the fees are expressed in the Employment Court Regulations 2000 should be retained, that is, the fees for non-FPA forms should continue to be expressed as GST-exclusive.

I am seeking delegated authority to make decisions consistent with the policy in this paper to address any issues that may arise during drafting

- 19 Further policy decisions may be needed during the drafting process, including for transitional provisions. I seek Cabinet authorisation to make such decisions, consistent with the policy in this paper.

To repeal the FPA legislation by Christmas 2023 the FPA repeal Bill will need to be considered directly by Cabinet and be passed under urgency

- 20 To repeal the FPA legislation by Christmas 2023, the Bill will need to be considered directly by Cabinet on 11 December for approval for introduction and pass through all parliamentary stages under urgency. To ensure this occurs, I intend to seek a motion that the Bill be passed through all stages under urgency.

Funding for bargaining sides

- 21 MBIE received an allocation of funding to disburse to FPA bargaining sides:
- 21.1 \$59,375 per bargaining side, capped at 12 FPA bargaining sides per year², and
 - 21.2 an additional \$25,000 available capped at six bargaining sides per year if membership of the unions or employer associations on their side is below a particular threshold.
- 22 To date, six FPAs have been initiated and \$481,250 in funding has been disbursed. If the maximum amount of funding was applied for, MBIE would be required to provide a further \$381,250³.
- 23 I do not consider it is appropriate to continue providing this grant funding when the system is being repealed, so I seek Cabinet's approval to stop it being provided the day after Cabinet has confirmed this decision. This means applications that have already been received but not yet approved will not receive the funding.

¹ When GST increased in 2010, the Employment Court was able apply the increase in GST to the fees it charges because section 78(3) of the Goods and Services Tax Act 1985 applies an increase in GST to any fee listed in any other legislation (unless there is a contrary provision). However, this resulted in the fees being charged appearing to differ from the fees specified in the Employment Court Regulations 2000.

² The amount available for just the 2023/24 year was increased to \$59,375 per bargaining side, following Business NZ's decline of the funding available to it. For subsequent years, the amount available would have been \$50,000.

³ Up to six bargaining sides could apply for and receive \$59,375 each. One additional bargaining side could receive the additional contribution of \$25,000.

Cost-of-living implications

- 24 As no agreements have been finalised, repealing the legislation will have no impact on employment terms and the employer costs associated with those. Employees who could have been within coverage of an FPA will no longer benefit from improved terms and conditions (where the terms of the FPA are better than their existing terms of employment).
- 25 The repeal of FPAs will improve business certainty, which is crucial for business growth and investment. If FPAs had been finalised, wage costs would have increased for affected businesses which in turn risked raising prices for consumers or causing businesses to close.

Financial Implications

- 26 MBIE and the Employment Relations Authority will be legally required to continue performing FPA-related functions until the repeal takes effect. Both entities received funding in Budgets 21 and 22 to deliver FPA-related operational functions.

Legislative Implications

- 27 Legislation will be required to repeal the FPA system. This will include repealing:
- 27.1 the Fair Pay Agreements Act 2022,
 - 27.2 which includes consequential amendments made under the Fair Pay Agreements Act to other Acts,
 - 27.3 the Fair Pay Agreements Regulations 2022, and
 - 27.4 the amendments made to the Employment Relations Authority Regulations 2000 and Employment Court Regulations 2000.
- 28 The Legislation Programme for the new Government has not been set yet. This Bill is, however, a priority as the Coalition Agreement between the National Party and ACT Party agrees to repeal the FPA legislation by Christmas 2023. I recommend that it should be included on the Legislative Programme, and that the Bill be passed under urgency.

Impact Analysis

Regulatory Impact Statement

- 29 The Treasury's Regulatory Impact Analysis team has determined that the proposal to repeal the Fair Pay Agreements (FPA) System is partially exempt from the requirement to provide a Regulatory Impact Statement. This exemption is granted on the grounds that the Regulatory Impact Statement produced when the FPA System was introduced in 2021 mostly duplicates the analysis needed to repeal the system. This exemption is conditional on MBIE producing a coversheet that provides assurance that the analysis is still applicable and provides any additional or updated analysis where relevant.

- 30 The previously completed Regulatory Impact Statement and coversheet analysis are attached.

Climate Implications of Policy Assessment

- 31 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 32 Women, Māori, Pacific people and young people are more likely than other groups to earn low wages. Disabled people experience significant disadvantage in the labour market, which includes earning less than non-disabled employees.
- 33 Given these populations are disproportionately represented in workforces where there are lower employment terms, they could have disproportionately benefited from any improved terms obtained by an FPA. This would, however, depend on whether these populations were more represented in the industries or occupations where FPAs were developed and whether the minimum terms agreed were better than their current terms.
- 34 I do not consider that a blunt tool such as FPAs would have been successful in improving employment terms for these groups. In addition, I consider that these population groups could have been disproportionately negatively impacted by any disemployment effects (i.e., if employers choose to hire fewer people or reduce hours of work due to higher costs associated with employment).

Human Rights

- 35 The Fair Pay Agreement system engages New Zealand's international obligations related to the right to strike, freedom of association, voluntary collective bargaining and compulsory arbitration.⁴
- 36 The Ministry of Justice assessed the FPA Bill for consistency with the New Zealand Bill of Rights Act 1990. It noted that the Bill engaged the rights of freedom of expression, freedom of peaceful assembly and freedom of association as well as freedom from discrimination. Despite this, the Ministry of Justice concluded that to the extent that the Bill engaged these rights and freedoms, the limitations were justified.
- 37 Repealing the FPA legislation will not affect our consistency with domestic rights and will avoid engaging our international obligations. I do not consider removing the legislation will engage any further rights or obligations.

⁴ Relevant international human rights obligations are from the ILO's Freedom of Association and Protection of the Right to Organise Convention 1948 (Convention No. 87); the ILO's Convention No. 98; article 22 of the International Covenant on Civil and Political Rights 1966 (ICCPR); and article 8 of ICESCR. New Zealand has not ratified ILO Convention No. 87. However, because it is one of the ILO's fundamental conventions, we are expected to abide by its principles as a member state of the ILO.

Consultation

- 38 Due to timeframe restrictions, no agencies were consulted on this paper.
- 39 This decision has been discussed in consultation with social partners New Zealand Council of Trade Unions (NZCTU) and BusinessNZ. NZCTU supports the FPA system and has commented in the media that it opposes the repeal of the FPA legislation. BusinessNZ has consistently publicly opposed the FPA system. No other consultation has occurred due to timeframe restrictions.

Communications

- 40 The Coalition Government has already publicly committed to repealing the FPA legislation. I intend to make a further announcement confirming this policy.
- 41 While the legislation is being repealed, stakeholders (e.g., bargaining sides) with obligations under the legislation will need to continue to meet those obligations. Subject to the decisions sought in this paper, my office will work with MBIE officials to develop messages for stakeholders confirming the Government's commitment to repeal the FPA system and explaining what this means for their current legal obligations.

Proactive Release

- 42 This 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.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 agree to repeal the Fair Pay Agreements Act 2022, including any consequential amendments made to other Acts made under the Fair Pay Agreements Act 2022;
- 2 agree to repeal the Fair Pay Agreement Regulations 2022, and any amendments made by the Employment Court (Fair Pay Agreement) Regulations 2023 and the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023 that relate to the FPA system, with the exception of the amendment covered in recommendation four;
- 3 agree for the Bill to repeal the FPA legislation to include minor standard transitional provisions (as necessary);
- 4 agree to retain the technical amendment made to the Employment Court Regulations 2000 under the Employment Court (Fair Pay Agreements) Amendment Regulations 2023 to express the figures for Employment Court fees in GST-exclusive form;
- 5 invite the Minister for Workplace Relations and Safety to issue drafting instructions to Parliamentary Counsel Office giving effect to the policy decisions in this paper;

IN CONFIDENCE

- 6 authorise the Minister for Workplace Relations and Safety to make decisions, consistent with the policy in this paper, on any issues that arise during the drafting process, including transitional provisions;
- 7 agree to include a Bill repealing the FPA legislation on the next Legislative Programme with the intention of it being passed before the end of 2023;
- 8 agree that the Bill be considered by Cabinet on 11 December for approval for introduction;
- 9 note to repeal the FPA legislation by Christmas 2023 the Bill will need to pass through all parliamentary stages under urgency. To ensure this occurs, the Minister for Workplace Relations and Safety intends to seek the Leader of the House's approval for the Bill to be passed through all stages under urgency;
- 10 agree that the Ministry of Business, Innovation and Employment should stop granting funding to bargaining sides for initiated FPAs from the day after this decision is confirmed by Cabinet.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety