



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.

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In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet

Fair Pay Agreements Act Repeal Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Fair Pay Agreements Act Repeal Bill (the FPA Repeal Bill).

Policy

- 2 The FPA Repeal Bill gives effect to the Cabinet decision on 4 December 2023 to:
 - 2.1 repeal the Fair Pay Agreements Act 2022, including reversing any consequential amendments made to other Acts under the Fair Pay Agreements Act 2022
 - 2.2 repeal the Fair Pay Agreements Regulations 2022 and reverse any amendments made by the Fair Pay Agreement Amendment Regulations 2023, Employment Court (Fair Pay Agreements) Regulations 2023 and the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023¹ [CAB-23-MIN-0470].
- 3 The repeal of the Fair Pay Agreements (FPA) legislation will remove the ability for unions and employer associations to bargain for minimum employment terms that would apply to all covered employees in an industry or occupation.
- 4 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). Once the FPA legislation is repealed, MBIE will cease its consideration of any initiation applications and bargaining for initiated FPAs will cease.
- 5 Cabinet delegated me the authority to make decisions consistent with the policy in this paper, on any issues that arise during the drafting process, including transitional provisions [CAB-23-MIN-0470]. I have not needed to use this delegation, as no issues arose in drafting. No transitional provisions are included in the Bill as the Legislation Act 2019 provides the necessary law regarding transitional arrangements.

¹ With the exception of a technical amendment made by the Employment Court (Fair Pay Agreements) Regulations 2023 to express the figures for Employment Court fees in GST-exclusive form.

Impact analysis

- 6 Cabinet has decided to suspend the requirement for Regulatory Impact Statements for decisions relating to 100-Day Plan proposals (taken within the 100 Days) which solely involve the repeal of legislation. However, MBIE had already developed a regulatory impact analysis to inform decision making.
- 7 The Treasury's Regulatory Impact Analysis team 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 was 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 was conditional on MBIE producing a coversheet that provides assurance that the analysis is still applicable and provides any additional or updated analysis where relevant.
- 8 MBIE provided the previously completed Regulatory Impact Statement and coversheet analysis with the policy paper seeking repeal of the FPA legislation.

Compliance

- 9 The Bill complies with the following:
 - 9.1 the principles of the Treaty of Waitangi;
 - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;
 - 9.4 the principles and guidelines set out in the Privacy Act 2020;
 - 9.5 relevant international standards and obligations;
 - 9.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 10 Due to the timeframe restrictions, no government agencies were consulted on this paper. A copy of the draft Cabinet paper and draft Bill was shared with the Ministry of Justice, as the FPA Repeal Bill will impact the jurisdiction of the Employment Court.
- 11 The policy 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. BusinessNZ has consistently publicly opposed the FPA system and has publicly called for it to be repealed. No other consultation has occurred due to timeframe restrictions.

Binding on the Crown

- 12 The FPA Repeal Bill does not include any provisions that are binding on the Crown. The FPA Repeal Bill repeals the Fair Pay Agreement Act, which was binding on the Crown.

Commencement of legislation

- 13 The FPA Repeal Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 14 It is intended that the Bill be introduced on 12 December and passed under urgency before the House rises for the 2023 Christmas period. The Bill will not be referred to select committee.

Proactive Release

- 15 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

I recommend that Cabinet:

- 1 note that Cabinet agreed that a Bill repealing the FPA legislation be included on the next Legislation Programme with the intention of it being passed before the end of 2023 [CAB-23-MIN-0470];
- 2 note that the Fair Pay Agreements Act Repeal Bill will repeal:
 - 2.1 the Fair Pay Agreements Act 2022, including reversing any consequential amendments made to other Acts made under the Fair Pay Agreements Act 2022;
 - 2.2 the Fair Pay Agreements Regulations 2022, and reversing any amendments made by the Employment Court (Fair Pay Agreements) Regulations 2023 and the Employment Relations Authority (Fair Pay Agreements) Amendment Regulations 2023, with the exception of a technical amendment made by the Employment Court (Fair Pay Agreements) Regulations 2023 to express the figures for Employment Court fees in GST-exclusive form [CAB-23-MIN-0470];
- 3 approve the Fair Pay Agreements Act Repeal Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 4 agree that the Bill be introduced on 12 December 2023;
- 5 note that to repeal the FPA legislation by Christmas 2023 the Bill will need to pass through all parliamentary stages under urgency.

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- 6 agree that the Government proposes that the Bill be enacted before the House rises for the 2023 Christmas period.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety

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