

# Employment Services – Fair Pay Act Repeal

## PROPOSAL FOR CHANGE

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December 2023

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## Introduction

Kia ora koutou,

The Government is delivering on its commitment to repeal the Fair Pay Agreement (FPA) legislation by Christmas 2023.

I know that many of you want certainty about what this means for Employment Services, particularly as we currently receive funding to support the FPA system in operation.

In terms of the law, once the Fair Pay Agreement Act 2022 is repealed then our work mandated by Cabinet and statute under it will come to an end. However, the general employment work we do, under wider employment law, continues.

To provide as much certainty as we can, as soon as possible, our immediate focus is to consult with those employees currently filling positions dedicated to FPA work which is mandated or empowered by Cabinet decisions and the Fair Pay statute.

This change process will be different in nature to those you will have seen undertaken across MBIE previously because the decision to repeal the legislation and bring the work of those in scope to an end has already been made by our government and Parliamentary processes. We are now consulting with you on how we go about making these changes.

I want to be clear that you are our top priority throughout. MBIE is committed to supporting you through this process by keeping you informed, answering your questions and considering your feedback on the proposed approach. While I appreciate that any change can be unsettling and consulting with employees in the lead up to Christmas is inherently stressful, I want to be as open and transparent as possible and provide all impacted employees with the greatest opportunity to consider their options.

I know that Employment Services is a success because of your skills and expertise, and I sincerely thank you for all your hard work while we have worked to implement and operate the FPA system.

We are here to support you. Please reach out to your people leader or you can find a range of support options from page 17 of this document.

Thank you in advance for your feedback and for your ongoing professionalism through this time of change. I look forward to hearing your thoughts and feedback on the proposed approach.

Ngā mihi



Katherine MacNeill

General Manager, Employment Services

## What is in this Document?

This document outlines the proposed approach to implement the Government's decision to repeal the legislation that provides for the Fair Pay Agreement system (*Fair Pay Agreement Act 2022* and associated regulations) and end grant funding for bargaining parties.

### Scope of this change proposal

This proposal focuses on those specific roles undertaking functions in the Regulatory Advisory Services and Dispute Resolution units that are currently dedicated to delivery of FPA work mandated or empowered by Cabinet decisions and FPA statute which will come to an end as a result of Cabinet decisions and once the FPA legislation is repealed.

Because a decision has already been made by the Government to repeal the FPA legislation, and Parliamentary processes have concluded, this consultation process is not about whether or not these dedicated FPA functions and work will end, but rather how we are proposing to implement these decisions, the resulting organisational structure and the potential impacts to employees.

It is important that I also signal this may not be the only change we are required to make as we continue to implement the Government's legislative programme and fiscal prioritisation decisions. Once we know what these mean for MBIE we will talk to you about any potential impacts.

### Understanding the proposed change

You can review the proposed changes by reading through this document and reviewing both current and proposed future state organisational charts. Towards the end of the document there is more detail about proposed changes to individual positions.

In addition, all employees who may be affected by the proposed change are being communicated with separately, to confirm specific detail pertaining to their position and proposed change process.

## Proposed change process

Find out more about MBIE's proposed change process from page 19. This determines how we classify the impact to our people, based on the proposed impacts to their positions.

Please note that due to the nature of this change, those employees who are permanently employed in a position that is to be disestablished, will be deemed to have affected status immediately. This means that these employees will have access to the reassignment and redeployment processes. Their affected status will also be applicable as part of any internal recruitment process with first consideration given to affected employees over other applicants subject to them meeting the suitability requirements of the position.

As part of this consultation process, you are also invited to provide feedback on the proposed change process including the reassignment and redeployment processes as well as having the opportunity to provide your feedback on what other support we could reasonably provide you at this time.

### Let us know

The information included in this document reflects the organisational structure as recorded in MBIE systems on December 2023.

If you notice any inconsistencies in the organisational structure represented, please advise your people leader or email [ESConsultation@mbie.govt.nz](mailto:ESConsultation@mbie.govt.nz).

### Providing feedback and indicative timeframes

We want to hear your feedback on this proposal as it affects our people. While the decision to repeal the FPA has been made by Cabinet, we specifically want your feedback on our proposal to give effect to this decision.

Further information on how you can provide your feedback and the indicative timeline is available on page 6.

## **Supporting our people through change**

People will have a wide variety of feelings in relation to the proposed changes. Please remember to be respectful of each other's opinions and privacy. If you have further questions regarding this change proposal or your personal situation, have a conversation with your people leader.

Further information on the support available is available from page 17.

## Providing feedback and indicative timeframes

Your feedback is important to the success of any changes we make and will be carefully considered.

While this change process will be different in nature to those you will have seen undertaken across MBIE previously, we still want to hear from you.

Specifically, I welcome your feedback on:

- our proposed approach to disestablishing those roles and functions that are currently dedicated to FPA work mandated or empowered by statute and Cabinet decisions, which will come to an end after the FPA legislation is repealed;
- the proposed organisational structure as a result of these decisions; and
- the potential impacts and change process proposed for our people.

This proposal has been shared with the Public Service Association (PSA). You can contact Niki Williams, PSA Convenor by emailing [Niki.Williams@mbie.govt.nz](mailto:Niki.Williams@mbie.govt.nz) during the consultation period for support and to discuss your feedback.

MBIE recognises that feedback can be provided in formats other than written, and as such will enable verbal submissions upon request. This also includes where the PSA wishes to speak to their collective submission orally.

Email feedback from individuals or groups – open for duration of consultation – should be sent to [ESConsultation@mbie.govt.nz](mailto:ESConsultation@mbie.govt.nz).

If you wish to provide your feedback verbally, please email [ESConsultation@mbie.govt.nz](mailto:ESConsultation@mbie.govt.nz) and we will arrange a suitable time.

## Indicative timeline

Activity	Indicative Timeframes
Consultation opens	15 December 2023
Access to reassignment and redeployment for affected employees	15 December 2023
Consultation closes	15 January 2024
Feedback reviewed and considered	15 – 31 January 24
Final decision	1 February 24
Proposed 'go-live' of new structure	22 February 2024 (TBC)

## Case for Change

The Government is delivering on its commitment to repeal the Fair Pay Agreement (FPA) system by Christmas 2023.

On 11 December 2023, Cabinet announced its decision to repeal the FPA system, by repealing the *Fair Pay Agreements Act 2022* (the Act) and associated regulations. The legislation was passed in Parliament on 14 December 2023 and is awaiting Royal Assent.

Cabinet has also decided MBIE must stop grant funding available under FPA bargaining due to the legislation being repealed. This decision took effect on 5 December 2023.

In terms of the law, once the Act is repealed then our work mandated and empowered by statute under it will come to an end. This means that this work by MBIE must also end.

### Key points about the proposed change

The FPA work in Employment Services this directly impacts is:

- **vetting and verification** of FPA applications and processes to support the Chief Executive MBIE on her statutory decisions under the Act;
- processing of FPA **grant funding** applications; and
- **bargaining support services**.

However, the general employment work we do, which is provided for under wider employment law and not the Act, continues.

The proposed changes are therefore focused on the specific roles undertaking functions in the Regulatory Advisory Services and Dispute Resolution units that are currently dedicated to delivery of FPA work that is mandated or empowered by Cabinet decisions and statute which will come to an end once the Act is repealed.

This consultation focuses on how we are proposing to implement the Government's decision to repeal the Act and end grant funding.

The following proposal has been developed by the General Manager Employment Services, in consultation with People & Culture, the PSA, and the Director Regulatory & Advisory Services and Director Dispute Resolution as responsible people leaders for the impacted areas.

### Impact of wider FPA funding for Employment Services

As set out above, to provide as much certainty as we can, as soon as possible, our immediate focus is to consult with those employees currently filling positions dedicated to FPA work which is mandated or empowered by the Fair Pay statute and Cabinet decisions.

I know that many of you want certainty about what this means more widely for Employment Services, as we currently receive funding provided under Budget 21 and Budget 22 to support the FPA system in operation. The FPA new initiative funding provided resourcing for our new Fair Pay Act dedicated functions and also to reinforce existing general employment functions and services to meet expected increased demand resulting from the Fair Pay system.

The Government has not yet announced decisions on MBIE funding. We are working through the implications of any decisions on FPA funding. We also need to consider the implications of any broader MBIE savings that are required as well as cost pressures on and continuing high demand for our employment services.

This therefore may not be the only change we are required to make as we continue to implement the Government's legislative programme and funding decisions. Once we know what the Government's decisions mean for MBIE we will talk to you about any potential impacts.

Until we have a clear signal from our new government on how these funding reductions and numbers might impact on MBIE, any discussion on potential organisational change beyond what is within this document is just that – options not definite realities.

## **Proposed Change #1: Vetting, Verification & Legal Research Services.**

The Vetting & Verification advisors and senior advisors in the Vetting, Verification & Legal Research Team undertake activities solely related to the obligations on the Chief Executive of the Ministry of Business, Innovation & Employment mandated and empowered under the FPA Act. With the repeal of the Act, this work will come to an end.

The Manager position is currently vacant with the team and is FPA funded. This position reports to the Director Regulatory and Advisory Services. Due to the vacancy, team members are currently temporarily supported by the Manager Service Advice & Analysis while we waited on election outcomes and then confirmation of the new Government's decisions regarding the repeal of the Fair Pay Agreement legislation.

This team also includes Legal Researcher positions. These positions provide legal research to support the Employment Relations Authority (ERA) for its general duties and CE MBIE's obligation to provide support services to the ERA, under the Employment Relations Act 2000. Substantively these team members currently have no reporting line manager.

### **Proposed change and future structure of the team**

Due to the Fair Pay Agreement legislation being repealed, the following changes are required:

- Disestablish the vacant Manager Vetting, Verification and Research Services position (16205718)
- Disestablish the Senior Advisor (Vetting & Verification) position (16208551)
- Disestablish the Advisor (Vetting & Verification) position (16208820)
- Disestablish the vacant Advisor (Vetting & Verification) position (16208817)
- Disestablish the vacant Advisor (Vetting & Verification) position (16208818)
- Disestablish the Advisor (Vetting & Verification) position (16208819)

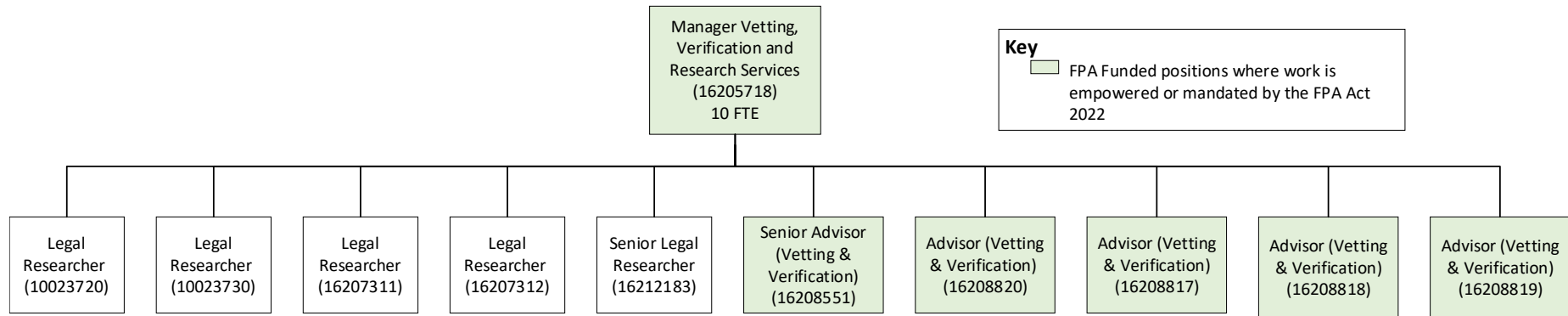
As a result, I am also proposing a change of reporting line for the four Legal Researcher positions (#10023720, #10023730, #16207311 and #16207312) and Senior Legal Researcher position (#16212183) to report to the Manager, Regulatory Data and Information.

I consider this alignment of functions is appropriate because the Regulatory Data and Information team facilitates Employment Services and ERA reporting, analysis and insights. The teams are currently collaborating on the design and delivery of Authority reporting. Enhancing this connection and the wider insights and analytical skill sets of both the legal researchers and the various analyst roles within the Regulatory Data & information team has wider benefits to both the ERA and Employment Services. I am not proposing any changes to the work these Legal Research positions undertake, it is a change in reporting line only.

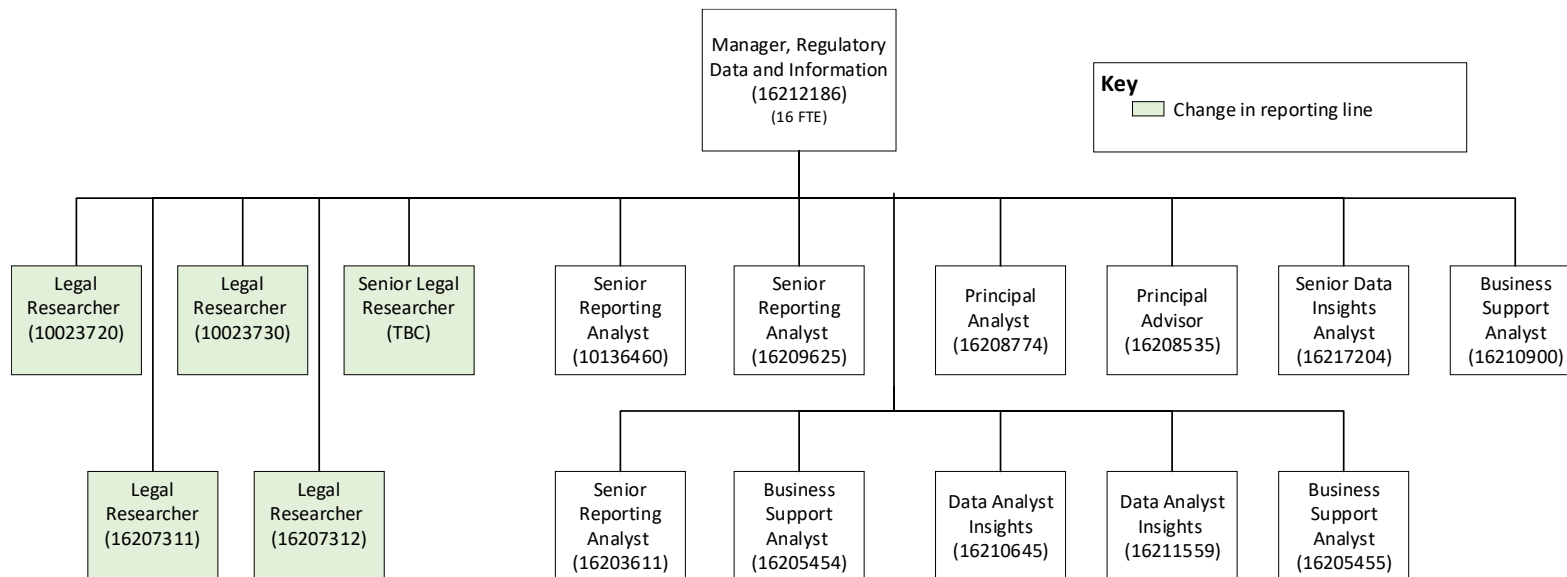
**Current and proposed future state organisational charts are available on page 9.**



**Chart 1: Current State High-Level Structure – Vetting, Verification and Research Services**



**Chart 2: Proposed Future State High-Level Structure – Regulatory Data & Information**



## **Proposed Change #2: Service Advice & Analysis.**

The facilitation of FPA grant funding contracts and payments to bargaining sides under the FPA system is currently undertaken by the Investment Coordinator position within the Service Advice & Analysis team.

Cabinet decisions on 4 December 2023 have resulted in the allocation of grant funding provisioned for bargaining sides ending, effective from 5 December 2023.

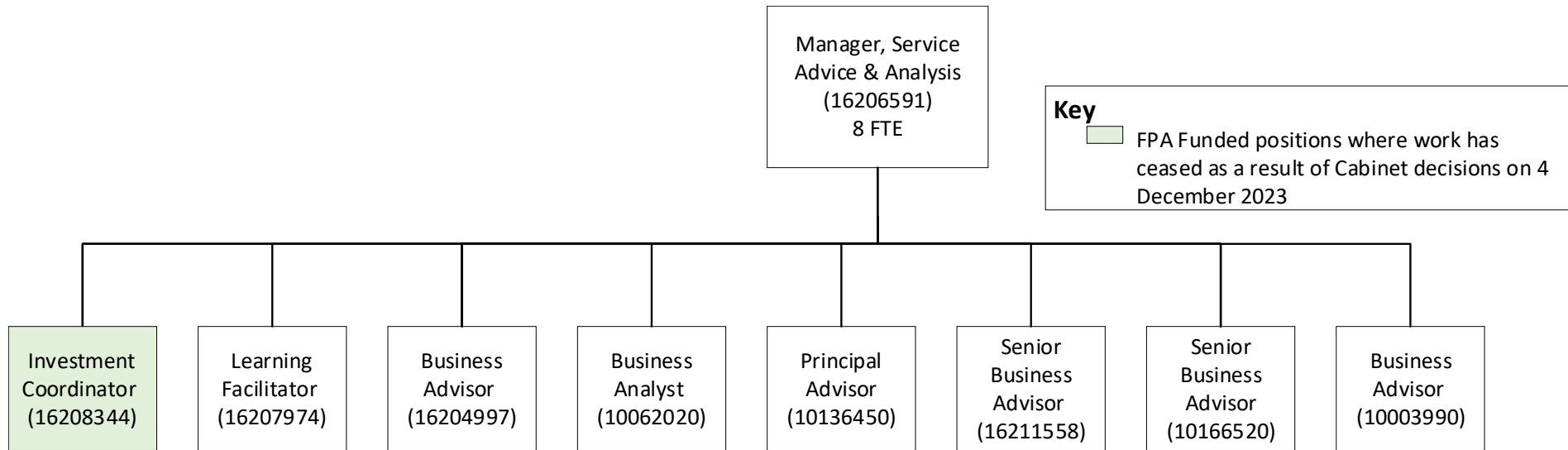
### **Proposed change and future structure**

Due to the Fair Pay Agreement legislation being repealed and Government's decision to end the allocation of new FPA bargaining grant funding, the following changes are required:

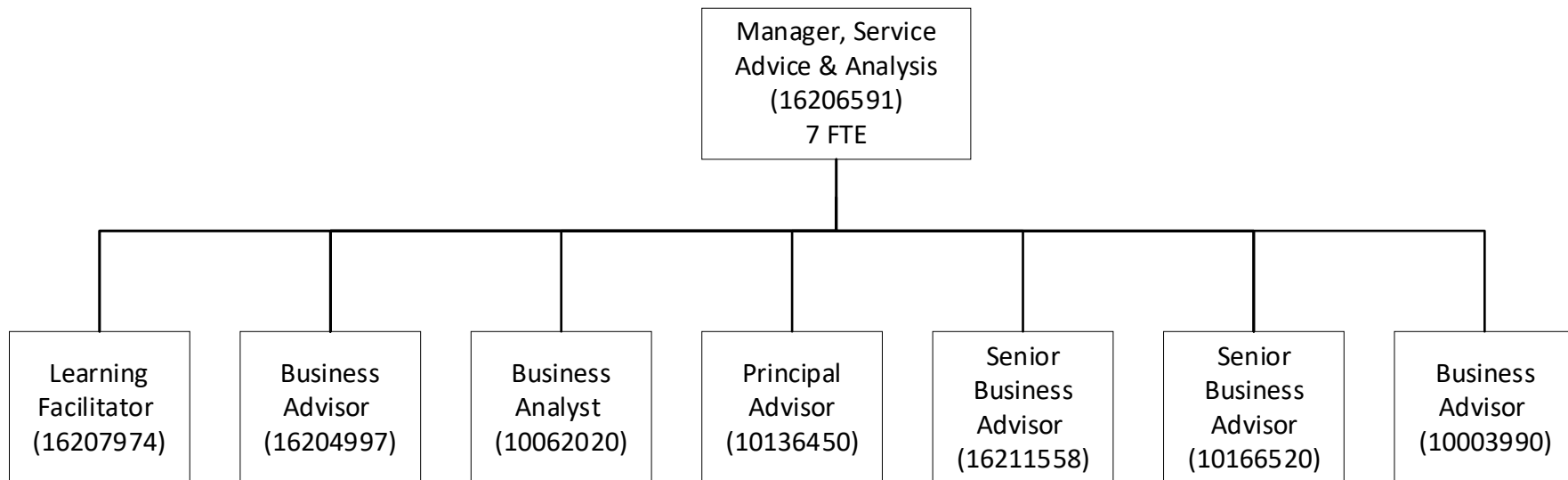
- Disestablish the Investment Co-ordinator position (16205718)

**Current and proposed future state organisational charts are available on page 11.**

**Chart 3: Current State High-Level Structure – Service Advice & Analysis**



**Chart 4: Proposed Future State High-Level Structure – Service Advice & Analysis**



### **Proposed Change #3: Capability & Early Resolution.**

Bargaining Support Services are empowered by provisions of the FPA Act (s222 of the Act). There are currently three filled positions in this team for Bargaining Process Practitioners, who deliver Bargaining Support Services. This function sits within the Capability & Early Resolution Team and the Bargaining Support Service was funded through Budget 21 and Budget 22 FPA new initiative funding to undertake activities related to supporting bargaining parties as part of FPA system to deliver on these FPA Act statutory provisions.

The team also includes the Early Resolution Service. However, the Early Resolution Service predates the FPA Act, having been set up in September 2020. It is provided as a dispute resolution service under general employment legislation for a wide range of employment problems. This service is not mandated or empowered by the FPA Act. The Early Resolution Service, comprising Early Resolution Facilitator and Senior Early Resolution Officer positions, is therefore out of scope of this change process.

The Manager Capability & Early Resolution leads both functions as part of the Employment Services Dispute Resolution leadership team. No change is proposed to this Manager position or to the reporting line for the positions that deliver the Early Resolution Service.

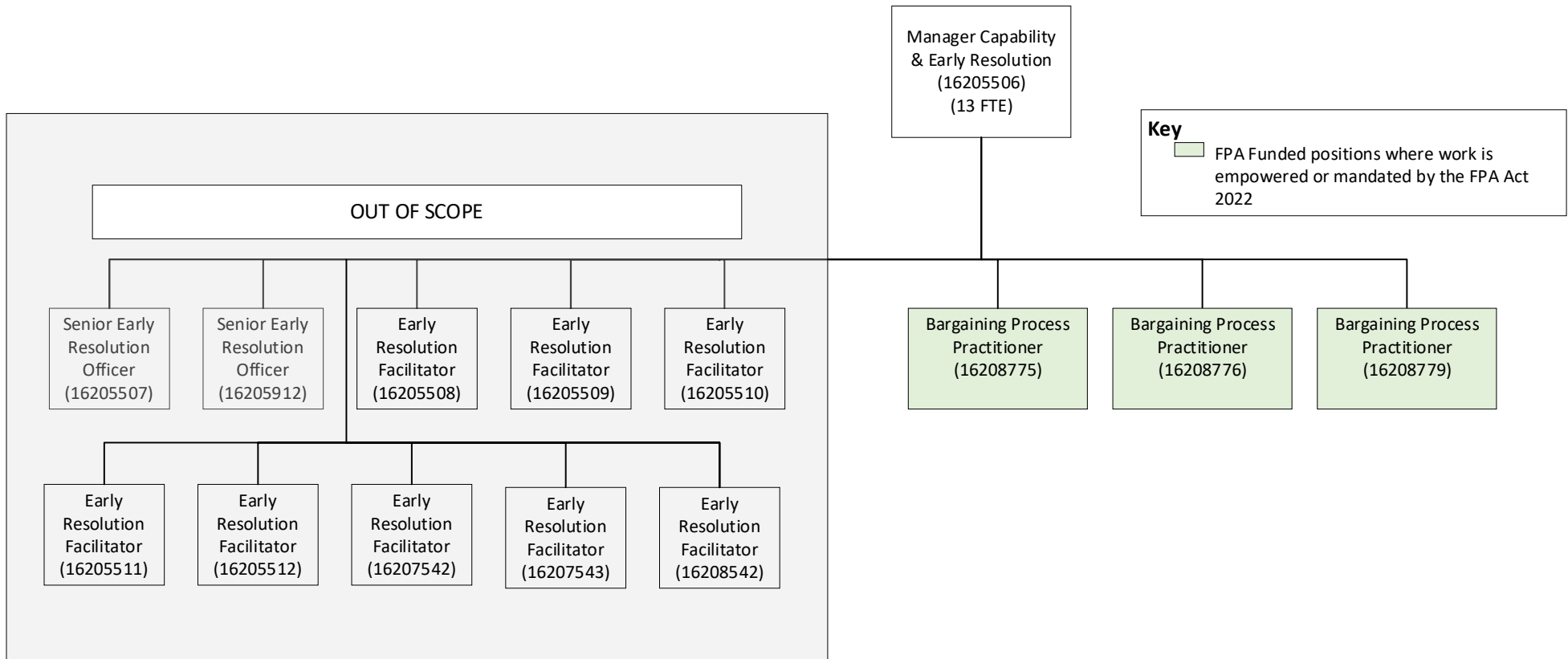
#### **Proposed change and future structure**

Due to the Fair Pay Agreement legislation being repealed, the following changes are required:

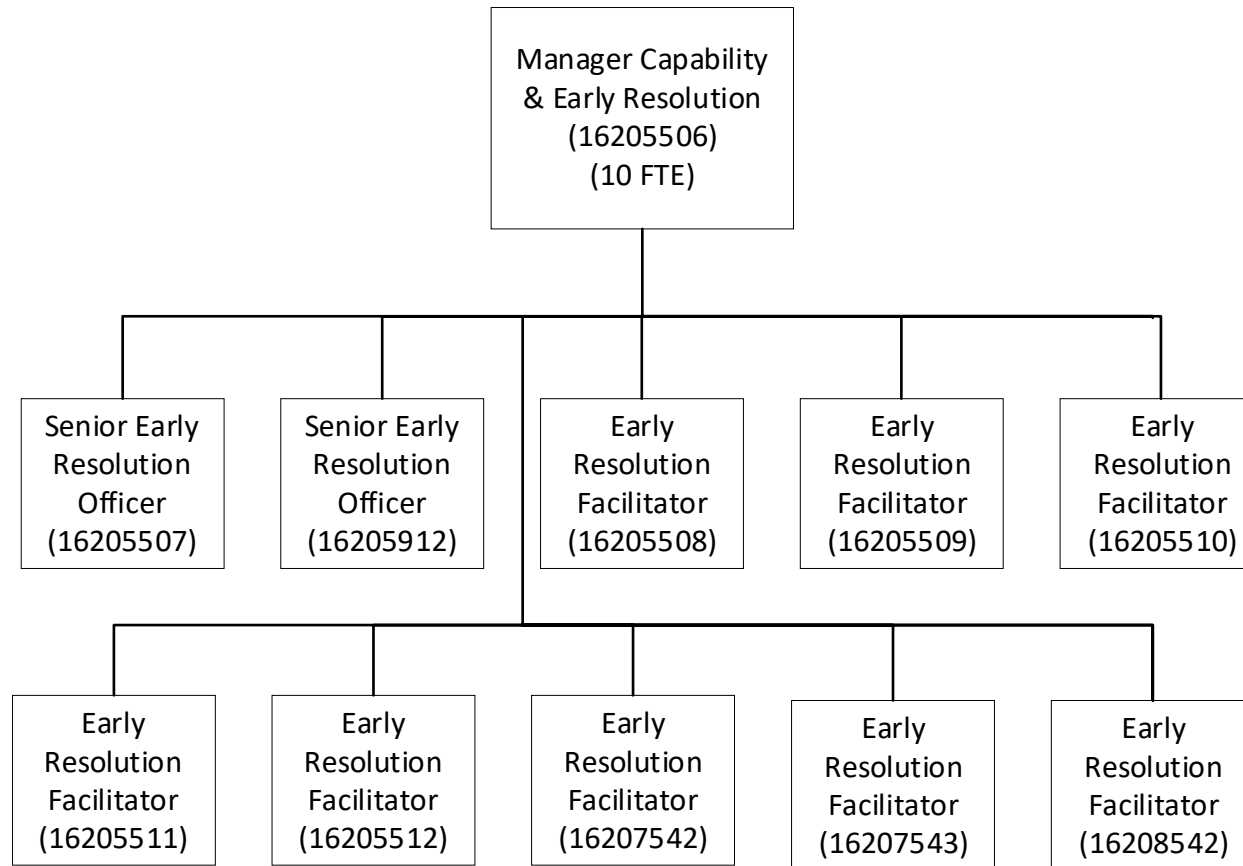
- Disestablish the Bargaining Process Practitioner role (16208775)
- Disestablish the Bargaining Process Practitioner role (16208776)
- Disestablish the Bargaining Process Practitioner role (16208779)

**Current and proposed future state organisational charts are available on page 13 and 14.**

**Chart 5: Current State High-Level Structure – Capability & Early Resolution**



**Chart 6: Proposed Future State High-Level Structure – Capability & Early Resolution**



## Summary of proposed changes by role

The following table details the changes required due to the Fair Pay Agreement legislation being repealed:

Position Title	Required change
Manager Vetting, Verification and Research Services position (16205718)	Disestablish vacant position
Senior Advisor (Vetting & Verification) position (16208551)	Disestablish position
Advisor (Vetting & Verification) position (16208820)	Disestablish position
Advisor (Vetting & Verification) position (16208817)	Disestablish vacant position
Advisor (Vetting & Verification) position (16208818)	Disestablish vacant position
Advisor (Vetting & Verification) position (16208819)	Disestablish position
Investment Co-ordinator position (16205718)	Disestablish position
Bargaining Process Practitioner position (16208775)	Disestablish position
Bargaining Process Practitioner position (16208776)	Disestablish position
Bargaining Process Practitioner position (16208779)	Disestablish position

The following table details the changes proposed as a result of the above:

<b>Position Title</b>	<b>Proposed change</b>
Legal Researcher position (10023720)	Reporting line change to Manager Regulatory Data & Information
Legal Researcher position (10023730)	Reporting line change to Manager Regulatory Data & Information
Legal Researcher position (16207311)	Reporting line change to Manager Regulatory Data & Information
Legal Researcher position (16207312)	Reporting line change to Manager Regulatory Data & Information
Senior Legal Researcher position (16212183)	Reporting line change to Manager Regulatory Data & Information



## Support through change

We recognise that change may be difficult and encourage you to reach out to your support network as well as taking advantage of the resources available to you, including:

### Wellbeing support

- Your people leader
- Our Employee Assistance Programme (EAP) provides external support for both work and personal issues ([Home | EAP Services Limited](#), 0800 327 669 or via the app)
- Your union delegate or representative can provide you or your people support through change ([Unions | HR](#))
- The Wellbeing, Health and Safety Team ([safetyandwellbeing@mbie.govt.nz](mailto:safetyandwellbeing@mbie.govt.nz))
- 1737 – Access free counselling services through the national telehealth service
- Te Puna Ora – Our one-stop shop for all things wellbeing related. Ensuring we all feel supported across the four pillars of work, social, mental and physical health. Go to My Dashboard – Te Puna Ora (<https://mbie.vitalityhub.co.nz/>). This can be accessed remotely using your MBIE login details.

### Learning support

- Learn@MBIE which holds all of MBIE’s learning content in one place. Access it via [Learn@MBIE](#).
- Specifically, the ‘[Change](#)’ learning module on Learn@MBIE is highly relevant.
- Percipio, the world’s largest online library. Access it via [Percipio](#), select ‘team/enterprise subscription’ and then enter ‘MBIE’ in the Site Name field.

### Career development

- MBIE’s [Career Services](#), through EAP, can assist with general career advice and is available for self-referral (employee-led). This also includes budgeting and financial advice, personal development and coaching, and personal legal advice.

### Outplacement support

Outplacement support is designed to help affected kaimahi with the tools, knowledge, and confidence to quickly transition into their next role. Support is provided as a programme which MBIE employees can take part in over a period, through an external provider. The programmes cover practical aspects related to career planning, job search, and networking.

Outplacement support is offered to MBIE people who are impacted by disestablishment of their position because of change. It will be offered if the person has been unsuccessful in securing another role at MBIE and is generally offered a month before the date of disestablishment.

MBIE people who have been offered outplacement support will continue to be provided with redeployment support from People and Culture, right up to the date of disestablishment.

## **Outplacement programmes available**

H2R Consulting is currently MBIE's supplier of outplacement programmes. In addition to the programmes themselves, MBIE people are offered access to H2R's Career Portal which contains extensive resources, questionnaires, templates, and handy tips, as well as links to career bytes and webinars.

Outplacement equips individuals with the tools, knowledge, and confidence to quickly transition into their next role. The programme covers many practical aspects of preparing for and conducting a job search:

- Skills assessment
- CV and cover letter writing
- Networking
- Developing a job search strategy
- Managing LinkedIn and Seek profiles
- Preparing for interviews
- Making informed career choices.

People and Culture Business Partners arrange outplacement support for affected people as part of wider redeployment support. They will discuss outplacement support with MBIE people in step with the conditions outlined above and will connect people with H2R directly.

## Proposed Change Process

Consistent with MBIE's employment agreements and recruitment policy, the following summarises the proposed change process (including reconfirmation, reassignment, selection, and redeployment processes) which would apply to any changes confirmed as a result of this consultation process.

### Reconfirmation

As part of the consultation process your substantive position may be proposed to be 'reconfirmed'. In these circumstances your substantive position in the proposed new structure is substantially the same as your current substantive position and you are the only person able to be reconfirmed to the role. Examples include change in reporting line, title, change in tier, and minor changes in work content.

For reconfirmation to apply:

- The position description you are being reconfirmed into is the same (or substantially the same) as what you currently do, and
- Salary and other terms and conditions for the position are no less favourable, and
- Location of the position is in the same local area (note: this need not necessarily mean the same building and/or the same street).

If your substantive position is reconfirmed as part of the final structure, you will not need to take any action as you will automatically be reconfirmed into the position.

### Contestable reconfirmation

Contestable reconfirmation applies where there is a reconfirmation opportunity but there are more employees who could be considered for reconfirmation than the number of positions available in the new structure.

In this situation we will use a contestable selection process to determine who is the best fit for the role.

### Reassignment – selection and expression of interest (EOI) process

If you are confirmed as being significantly affected by any of the confirmed changes you will be able to apply for any other existing MBIE vacancies that you are suitably qualified/experienced for. This can be done via the MBIE website.

You will be considered an affected employee if you are permanently employed in a position that is:

- to be disestablished;
- to be changed to the extent that it cannot reasonably be considered as the same position or a substantially similar position; or
- subject to a significant location change outside of the current local area.

Please note that you will not be considered affected if your substantive position only has a change in business group, branch, reporting line, job title, tier, or work location (within the 'same local area' or region).

### Redeployment

If you wish to apply for any other existing MBIE vacancies (i.e., vacancies that are being advertised separately to this change process), this can be done via the MBIE careers site at any stage.

If you are considered an affected employee, this will need to be indicated as part of your application as first consideration will always be given to affected employees over other applicants subject to them meeting the suitability requirements of the position. Where applicable, a panel interview will be used as a contributing selection tool to assess the demonstrated skills, experience and qualifications against the key accountabilities and person specifications as outlined in the position description.

### **Review process**

If you disagree with the application of this process, including for example your reconfirmation or direct reassignment into a position as part of the final structure, you have the right of review. This process is set out in your employment agreement. You are encouraged to raise any concerns with your people leader at the earliest opportunity so these can be worked through with you on a case-by-case basis.

### **Secondments and acting arrangements**

If you are currently on secondment or acting in a different position, there may be potential changes proposed for that position as well as your permanent substantive position. However, you will only be considered an affected employee if your permanent substantive position is significantly impacted.

It is intended that people will continue in their temporary position until the end of the term currently in place unless otherwise advised.

### **Process for casual and fixed term employees**

Casual and fixed term employees, by the nature of their employment agreements, will not have access to the change processes set out above.

Upon completion of the change management process for affected permanent employees, any remaining vacant positions in the new structure would be openly advertised through standard recruitment and selection processes and any casual or fixed term employees would then be able to apply.