



EVENT BRIEFING

Meeting with the Council of Trade Unions on Industry Transformation Plans

Date:	16 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0864 19-20

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister for Economic Development	<p>Note that you are meeting with the Council of Trade Unions on Wednesday, 18 September from 4.00 - 4.30pm.</p> <p>Note the talking points for this meeting attached as Annex One.</p>	18 September 2019

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Robyn Henderson	Manager, Sectors Policy	04 901 1305	s 9(2)(a)	✓
Paige Wilburn	Policy Advisor, Sectors Policy	04 901 4951	N/A	

The following departments/agencies have been consulted
N/A

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



EVENT BRIEFING

Meeting with the Council of Trade Unions on Industry Transformation Plans

Date:	16 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0864 19-20

Purpose

You are meeting with the Council of Trade Unions (CTU) on Wednesday, 18 September from 4.00 - 4.30pm to discuss Industry Transformation Plans (ITPs).

Recommendations

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

- a **Note** that you are meeting with the CTU on Wednesday, 18 September 2019 from 4.00 – 4.30pm to discuss their interests and involvement in ITPs.
- b **Note** the talking points for this meeting attached as Annex One.

Noted

Noted

Robyn Henderson
Manager, Sectors Policy
Labour, Science and Enterprise, MBIE

16 / 9 / 2019

Hon Phil Twyford
Minister for Economic Development

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Background

1. You are meeting with Richard Wagstaff, President of the CTU on Wednesday, 18 August 2019 from 4.00 - 4.30pm. Officials from MBIE will be briefing you from 3.30 - 4pm.
2. Richard Wagstaff was elected CTU President in 2015. He was previously CTU Vice President and one of two national secretaries of the Public Service Association. Richard is currently a member of the International Labour Organisation (ILO) Governing Body and the ILO Committee for Freedom of Association. Richard is also a member of the Future of Work Tripartite Forum.

Industry Transformation Plans

3. To support the government's objective to deliver a productive, sustainable and inclusive economy with net zero emissions by 2050, ITPs are being developed with key industries. ITPs are proposed as the vehicle to bring in a range of perspectives around a particular industry to develop an agreed vision and action plan, with a focus on long-term transformation.
4. ITPs will be developed in partnership between government, industry, science and academia, iwi, unions and other interested stakeholders and will be targeted to the unique opportunities and challenges faced by each sector. ITPs are initially being developed for four priority sectors: Agritech; Food and Beverage; Forestry and Wood Processing; and Digital Technologies.
5. The Construction Sector Accord, which has been characterised as the first ITP, is currently the subject of stakeholder engagement towards developing an action plan, with a view to seeking Cabinet agreement to a detailed transformation plan and ongoing funding model in December 2019.
6. Cabinet has also agreed to develop ITPs for an additional six sectors, work on which will begin from 2020: Creative Industries; Tourism; Aerospace; Renewable Energy; and Health Technologies.
7. A report-back to Cabinet on the progress of the four priority ITPs is due in October 2019. Work on the Agritech ITP is already well advanced, so it is expected that a draft ITP for this sector will be included in the report-back for public consultation, with draft ITPs for the other three sectors finalised in 2020.

Engagement with the CTU and Business New Zealand on ITPs

8. The successful development of ITPs requires collective input by a range of stakeholders to work together to identify long-standing obstacles and emerging opportunities, and actively plan for how these can be addressed. In order to achieve a successful transition, we have committed to developing ITPs on a tripartite basis, which will support our work to consider the skills needs and labour market dynamics for each ITP.

Workshop with the CTU on 3 September 2019

9. On Tuesday 3 September, officials met with representatives from Business New Zealand and CTU (including Richard Wagstaff).
10. The key discussion points from the workshop were as follows:
 - We discussed the principles, strategic priorities and criteria for the selection of sectors for ITPs, and the potential to extend the selection criteria to include 'transitioning' sectors for future ITPs (noting that the current resources would not permit exploration of these ITPs until 2020 at the earliest).

- Officials committed to working with social partners to develop a shared understanding of what it means to develop an ITP (e.g. what the key components are, how to ensure collaboration, and where there are opportunities for shared resource).
 - Social partners agreed to commence discussions with relevant members and affiliates about how they can be actively involved in the development of the first four ITPs and potential focus areas for future ITPs.
 - It was acknowledged that there will be differing opportunities for social partners to be involved in each ITP based on the challenges and opportunities of each specific sector.
11. The discussion was positive and confirmed that there is significant potential and interest for our social partners to be active partners in the ITP work. We confirmed that our engagement with social partners will include:
- refining the principles and criteria underpinning ITP development;
 - identifying opportunities for ITP development in transitioning sectors; and
 - developing guidelines for ITP development.

Next steps in engaging with social partners

12. Following this workshop, MBIE have provided CTU with an update on the development of the four priority ITPs including an outline of the work undertaken so far and proposed next steps.
13. Officials are seeking feedback on any gaps or opportunities that have not been identified; whether there are other stakeholders that have an interest and should be involved; and how social partners would like to be involved in each of the four priority ITPs.
14. Officials will be holding another workshop with social partners on Wednesday 25 September to discuss, in part, the purpose and criteria for selecting sectors to reflect the opportunities presented by ITPs in 'transitioning' sectors.
15. The CTU suggested that one additional criteria could be to pursue an ITP with emerging, significant or strategic industries that face challenges or adjustments. This could expand the scope of ITPs to sectors that are likely to undergo significant disruption either to workers, firms or both.

Initial assessment of the care and transport industries for an ITP

16. At the workshop with social partners, the CTU raised the possibility of ITPs with the care and transport industries, on the basis that these sectors are likely to have increasing labour demand (especially in the case of aged care), could be disrupted through technological and demographic change (for instance, in the case of road freight transport and shipping), or face current labour market issues that might be solved through coordination and collective impact across the labour market (such as national shortages of bus drivers).
17. Further work is needed to assess the issues and opportunities in these industries, and to assess whether an ITP is a suitable mechanism to pursue action. In the meantime, the following points are our initial thoughts on the sectors raised by the CTU.

The care industry

18. This industry could be scoped to include both residential, and home and community care (i.e. care provided in residential facilities, and care provided as a service in peoples' homes), and could include aged care and other care (e.g. disability).
19. An ITP with home-based care providers would likely be logistically challenging due to the complexity of the sector, and would require coordination with the Ministry of Health and district health boards (as they have contracts with service providers to provide home and

community support services). However, there are opportunities to address persistent issues in the sector.

20. The Minister of Immigration recently agreed that one of the first two Sector Agreements (as part of a new approach to employer-assisted temporary work visas) will be the residential aged care sector – which could be expanded to include all residential care. Officials supporting the Sector Agreement process expect that formal negotiations with the residential care sector could commence in early 2020, with early engagements beginning now.
21. Given the upcoming sector-based negotiation between the government and the sector, we recommend that an ITP not be pursued. The possibility of a future ITP could be considered as part of the negotiation process for the Sector Agreement. However, attempting to pursue both an ITP and Sector Agreement concurrently would risk putting too much work on the sector, and could complicate the negotiation process.

The transport industry

22. Like the care industry, there are persistent issues in the transport industry that could be addressed through targeted interventions. An ITP, if scoped to also include sectors that are facing challenges or disruptions, could be an appropriate place to consider these issues and create joint actions across the industry and government.
23. There is also a Sector Agreement planned for the road freight transport sector. The Minister of Immigration has not made decisions to commence negotiations for this sector, or indicated when this might be, but the sector was identified as one of six sectors suitable for the first Sector Agreements over the coming couple of years.
24. A larger-scope ITP with the transport industry as a whole could be possible, if this was identified as appropriate, although further work would be needed to explore what this could look like, and to map out intersections with existing or planned work (such as a Sector Agreement).

Oversight of the ITP process and role of the Future of Work Tripartite Forum

25. On Wednesday, 18 September 2019 Cabinet Economic Development Committee will have a strategic discussion about the government's Future of Work Transitions work programme.
26. The Transitions work programme encompasses: ongoing strategic advice on Future of Work and Transitions issues; Taranaki Partnership; ITPs; support for displaced workers; facilitating in-work training; protections for non-standard workers; and a review of Active Labour Market Policies.
27. Officials have provided a timeline for the development of the four priority ITPs and the Construction Sector Accord out to quarter two 2020 to support this discussion.
28. On Thursday, 19 September 2019 you are attending a Future of Work chew session with Ministers Robertson, Woods, Hipkins, Sepuloni, Lees-Galloway, Martin and Jackson to discuss the Future of Work and Transitions Work Programme. The agenda for the meeting includes:
 - the functions and form of a Transitions Unit that will coordinate the work programme;
 - the role of the Tripartite FoW Forum in the FoW and Transitions work programme;
 - how to manage the shift from the existing Forum work programme to the new work programme that is informed by the Strategic Assessment; and
 - the publication and launch of the Strategic Assessment.

29. It has been proposed that the Forum will play a role in shaping the strategic direction of the ITP work programme as part of the Forum's key priority to progress generic tools for industry mapping and associated workforce development activities.

Annexes

Annex One: Talking points for your meeting with CTU

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Annex One: Talking points for your meeting with CTU

Background

- As you will be aware, on 2 July the Government launched the Industry Strategy, *From the Knowledge Wave to the Digital Age – Growing Innovative Industries in New Zealand*. This strategy set out how we will achieve our vision for a more productive, sustainable and inclusive economy with net zero emissions by 2050.
- Drawing on international best practice, the Industry Strategy will be given effect through the development of Industry Transformation Plans, or ITPs, with key sectors in the economy. The ITPs will include an agreed vision for the long-term future of the industry and what needs to be done to achieve it.
- At their core, ITPs are about Government, industry, business, science, academia, unions, iwi and other interested stakeholders working together to identify long-standing obstacles and emerging opportunities, and then actively planning for how these can be addressed.

Engagement on the development of ITPs

- I understand since we last met you have been engaging with my officials at the Ministry of Business, Innovation and Employment on the development of the ITPs.
- First of all, thank you for engaging in this process. Our ability to realise our vision for the New Zealand economy relies heavily on tripartite engagement on some challenging, disruptive and long-term issues.
- There is a real opportunity to use the ITPs to better prepare industries to respond to emerging challenges, and also to take advantage of global opportunities that fit with New Zealand's strengths – whether these stem from capabilities, human capital, or natural resources.
- I am pleased that you are drawing on your expertise to identify where the challenges and opportunities lie to achieve transformation change in our economy. I want to encourage you to continue to actively engage with the development of the ITPs.
- I think ITPs will need to look at a broad range of issues in order to achieve real transformation. I understand that you are providing feedback on the principles, strategic priorities and criteria for the selection of sectors for ITPs, including the potential to extend the selection criteria to include 'transitioning' sectors for future ITPs.

Suggested response if aged care is raised as a possible sector for an ITP

- I agree that there are persistent issues in the care sector that need to be addressed. As you know the Minister of Immigration announced yesterday that as part of the new approach to employer assisted work visas, a Sector Agreement will be negotiated with the residential aged care sector.
- Given this upcoming negotiation between the government and the sector, it may not be the right time to develop an ITP for this sector. There is a risk that both an ITP and a Sector Agreement would overburden the sector and complicate the negotiation process. This does not mean an ITP couldn't be developed with this sector in the future however.

Suggested questions

- What feedback have you had from relevant members and affiliates about how they would like to be involved in the ITP process?
- Which 'transitioning' sectors do you think are good candidates for an ITP? What value do you think an ITP would bring to those sectors?
- Have you had any feedback from members or affiliates about potential sectors for future ITPs?

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BRIEFING

MBIE Project People & Pay Update

Date:	12 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0820 19-20

Action sought		
	Action sought	Deadline
Hon Minister Phil Twyford Minister for Economic Development	Note the contents of this briefing paper. Note that relevant officials will attend the next weekly officials meeting to discuss if required.	At your earliest convenience.

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Megan Main	DCE, CG&I	04 901 3872	s 9(2)(a)	✓
Richard Griffiths	GM People and Culture	04 901 1596		
Dawn Bowden	Head of People and Culture Operations and Systems	04 901 1541		

The following departments/agencies have been consulted [double click box & click 'checked']					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:					

Minister's office to complete:

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| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
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| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

MBIE Project People & Pay Update

Date:	12 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0820 19-20

Purpose

This briefing provides an update on the Project People & Pay (previously referred to as Payroll Renewal) currently underway at the Ministry of Business, Innovation, and Employment (MBIE).

Recommended action

MBIE recommends that you:

- a **Note** that MBIE has made good progress with the design and build phase of our new payroll system. *Noted*
- b **Note** that MBIE is conducting an independent assurance review of our project prior to entering the System Integration Testing phase. *Noted*
- c **Note** that MBIE has completed the delivery of the agreed scope of remediation activities and the Ministry has met its obligations under the Labour Inspectorate Enforceable Undertaking. *Noted*
- d **Note** that it is imperative that MBIE continue with the implementation of our new payroll solution. Our current version of payroll software will be unsupported by early 2022. *Noted*
- e **Note** that MBIE will report back to the Minister following the conclusion of the independent review once any recommendations and impacts have been considered. *Noted*

Megan Main
Deputy Chief Executive
Corporate Governance & Information, MBIE

12 / 09 / 2019

Hon Phil Twyford
Minister for Economic Development

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Summary

1. In December 2018 former Minister for Economic Development, Hon David Parker approved the investment proposal for a new payroll solution.
2. The approved budget for this project was \$17.6m.
3. Following Minister Parker's approval, MBIE began implementation activities in February 2019 with an external vendor (SAP) and the project has made significant progress, with the project team working hard to meet major milestones.
4. The project is nearing the end of the design and build phase for the new payroll system. To ensure our payroll solution build to date is robust and will deliver the intended future benefits, the steering group have elected to conduct an independent assurance review, acknowledging the challenges inherent in designing and implementing a payroll system.
5. The review will also assess the current state of our governance, scope and delivery approach to ensure that the project is in a sound position to deliver the future phases of the project.
6. The review is scheduled to take 6 weeks to complete and commenced on 11 September.
7. While it is anticipated that some disruption and delay may occur from conducting a review, it is deemed a critical stage in the project and an assurance checkpoint will increase confidence over the remaining delivery timeframe.
8. It remains an MBIE imperative to implement a new payroll system as continued and sustained use of the existing payroll system comes with an increasing operational risk around our ability to pay employees accurately and timely.
9. Our current version of payroll software will start to become unsupported in Q1 2021 and we will have a fully unsupported system by Q1 2022.
10. The Holidays Act compliance matters identified in two Enforceable Undertakings agreed with the Labour Inspectorate in 2016 have been concluded and the Inspectorate has closed the file. Remediation arrears owed to current and former employees totalled \$4.6 million. Arrears for the period 21/08/2008 to 27/06/2018 were paid to current employees in November 2018, and the process of contacting and paying former employees commenced in March 2019.
11. Until the new payroll system is implemented, interim improved compliance is being maintained by regular use of the remediation calculator and payment of any arrears, manual processes, reporting, and monitoring. Some areas of Holidays Act compliance will not be achieved until implementation of the new payroll system – for example, annual holiday entitlements managed in weeks.



AIDE MEMOIRE

Background on 'The Lord of the Rings' based series

Date:	17 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BR 0906 19-20

Information for Minister

Hon Phil Twyford
Minister for Economic Development

Rt Hon Jacinda Ardern
Minister for Arts, Culture and Heritage

Hon Grant Robertson
Associate Minister for Arts, Culture and Heritage

Hon Carmel Sepuloni
Associate Minister for Arts, Culture and Heritage

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Dean Ford	General Manager, Economic Development and Transitions	04 901 9882	
Robyn Henderson	Manager, Sectors	04 901 1305	✓

Minister's office to complete:

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| <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:

AIDE MEMOIRE

Background on 'The Lord of the Rings' based series

Date:	17 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BR 0906 19-20

Purpose

Ahead of the proposed announcement of New Zealand as the production location for a series based on *The Lord of the Rings*, we summarise the key elements in getting to this stage.



Robyn Henderson
Manager, Sectors

17 / 9 / 2019.

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Background

1. In 2017 Amazon Studios acquired the rights to produce a multi-season series based on The Lord of the Rings novel by J.R.R. Tolkien. Global interest in the forthcoming series has been high, due to the popularity of the Tolkien stories and the significant financial investment Amazon is committing to the project. Information on the series has been slowly released on social media, including details of the key production team and the news that the series will be set in the 'Second Age' of Middle-earth.
2. Production on season one of the series is expected to commence in 2020.

Attracting international screen productions is a globally competitive process

3. Having secured the rights to make the series, Amazon undertook a global search for a production base. This included confidential visits to New Zealand in 2018. It is normal for studios to research and consider multiple global locations for large budget productions. This is a competitive process, and particularly so for productions which are likely to bring significant expenditure to the host country and which are expected to attract a substantial global audience.
4. New Zealand agencies, including the New Zealand Film Commission, regional film offices and regional Economic Development Agencies, organised and worked collectively to present New Zealand as an attractive proposition.
5. New Zealand's pitch sought to showcase our iconic scenery, world-class cast and crew, internationally competitive financial incentives and modern studio facilities. Amazon representatives visited several regions as part of their search, guided by the studio's creative and production needs.
6. An introductory call on Minister Parker, as Minister for Economic Development, was also arranged.

New Zealand has been selected as the production location...

7. Amazon have now advised us that they will shortly announce New Zealand as the production location. The announcement will be made on Wednesday 18 September (NZT).

...requiring ongoing 'NZ Inc' engagement with the production team

8. Like other international productions which choose to locate in New Zealand, the series will engage with multiple government agencies throughout the production cycle.
9. The New Zealand Film Commission serves as a primary point of contact for international productions. The Commission also administers the New Zealand Screen Production Grant, for which the production is expected to register. The grant provides an automatic 20 percent rebate on qualifying expenditure undertaken in New Zealand.
10. The production will also engage closely with other central and local governmental agencies and commercial suppliers, in accordance with the production's requirements.
11. Amazon has explained the ongoing need for confidentiality, to ensure filming is not disrupted and sensitive details such as locations, storylines and the whereabouts of personnel are not revealed. There are also a range of commercial and reputational reasons why New Zealand needs to handle information related to this series with due care, as is the case with other international screen productions.

This is a production of scale and significance....

12. While the production will operate in New Zealand under standard terms and conditions, there are features which set it apart.

Amazon

13. Unlike the traditional Hollywood studios, Amazon Studios is associated with the Amazon Prime streaming service and the global business enterprise Amazon Inc.
14. Amazon Prime Video is a 'direct to consumer' content provider, operating worldwide (with some exceptions). The series will be aired on this platform.
15. Amazon Studio's parent company, Amazon Inc., operates a wide range of subsidiaries, from e-commerce to whole foods supermarkets. A successful working partnership with Amazon offers the potential to expand New Zealand's relationship with this major global player, particularly in the area of research and development.

New Zealand's association with Middle-earth

16. The Tolkien books, and *The Lord of the Rings*, occupy a special place in New Zealand's modern culture and identity. A close association has been established between New Zealand and Middle-earth, both amongst ordinary New Zealanders and international fans – many of whom have travelled here as a result. The series offers an opportunity to further extend this association.

Scale of economic benefit

17. This production has potential to offer considerable economic benefits, including for employment, the fostering of talent development, and the growth of businesses which support the screen industry. This includes opportunities in the creative and digital technology sectors – which are key areas of focus for New Zealand's economic development.

....and presents opportunities to leverage wider gains for the economy

18. A major series based on *The Lord of the Rings* in and of itself is a significant opportunity for New Zealand, however we will want to seek to maximise the gains that can be leveraged through and from the production.
19. One avenue to explore wider leverage opportunities is the '5% Uplift'. This is a discretionary measure available under the New Zealand Screen Production Grant. The '5% Uplift' raises the rebate level from 20 to 25 percent.
20. Amazon has been invited by MBIE and the Film Commission to submit an application for the '5% uplift'. Applications are assessed by a joint panel comprised of senior officials and industry representatives. Decisions are based on the merits of the proposal and a points test that sets certain thresholds for the participation of New Zealanders and local suppliers in the production.

Next steps

21. We will continue to work with Amazon Studios' representatives to assist the production's entry into New Zealand. This is an exciting proposition for New Zealand, and we are pleased by the collaborative nature of our interactions with Amazon Studios to date. We are optimistic that this production presents a sound platform for a long term and mutually-beneficial partnership with Amazon Studios, and with the wider Amazon business network.

22. We will keep Ministers updated as we learn more about the production, and notify you of any decisions in relation to the '5% Uplift'.

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BRIEFING

Further advice on proposed Supplementary Order Paper to the Regulatory Systems (Economic Development) Amendment (No 2) Bill

Date:	19 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0908 19-20

Action sought		
	Action sought	Deadline
Hon Phil Twyford Minister of Economic Development	<p>Note the advice provided in this briefing, ahead of Cabinet on 23 September 2019.</p> <p>Forward this briefing to the Minister of Justice and the Minister of Commerce and Consumer Affairs.</p> <p>Meet with officials to discuss these matters, if you wish.</p>	23 September 2019

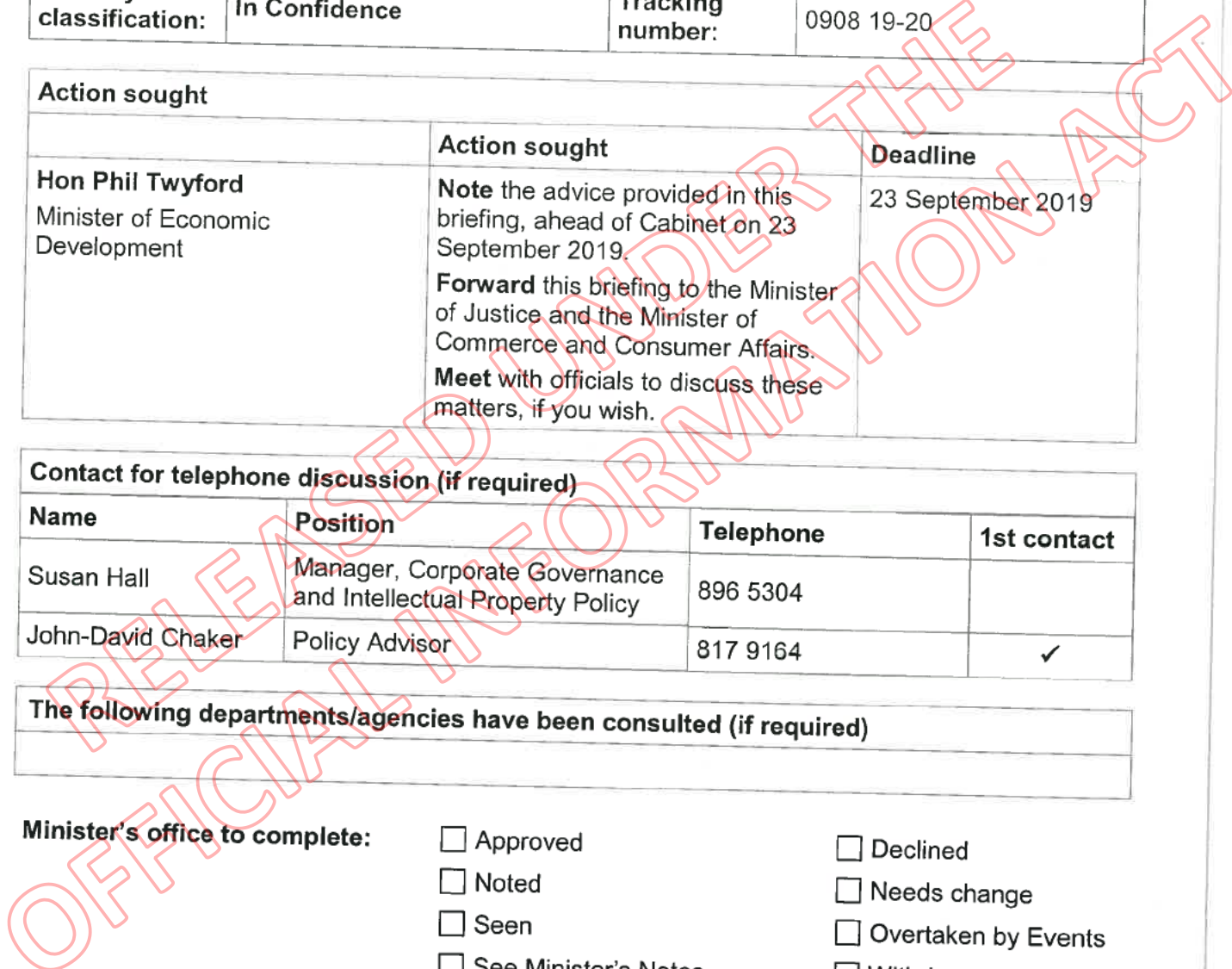
Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Susan Hall	Manager, Corporate Governance and Intellectual Property Policy	896 5304	
John-David Chaker	Policy Advisor	817 9164	✓

The following departments/agencies have been consulted (if required)

Minister's office to complete:

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| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:





BRIEFING

Further advice on proposed Supplementary Order Paper to the Regulatory Systems (Economic Development) Amendment (No 2) Bill

Date:	19 September 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0908 19-20

Purpose

To provide further advice on a matter raised during Cabinet Legislation Committee (**LEG**) for the Supplementary Order Paper (**SOP**) to the Regulatory Systems (Economic Development) Amendment (No 2) Bill (the **Bill**) (briefing 0662 19-20 refers).

Recommended action

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

- a **Note** our additional advice in this briefing on the contents of the proposed Supplementary Order Paper to the Regulatory Systems (Economic Development) Amendment (No 2) Bill, considered by the Cabinet Legislation Committee on 17 August 2019.

Noted

- b **Note** that the Cabinet paper considered by LEG on 17 August 2019 was referred to Cabinet on 23 September, with a request for further advice on a matter raised by the Minister of Justice.

Noted

- c **Forward** a copy of this briefing to the Minister of Justice and the Minister of Commerce and Consumer Affairs.

Forwarded

- d **Meet** with officials to discuss this briefing, if you wish.

Agree / Disagree

Susan Hall
**Manager, Corporate Governance and
Intellectual Property Policy**

Hon Phil Twyford
Minister of Economic Development

19/9/19

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Background

1. On 17 September 2019, LEG considered a paper seeking approval for the introduction of a SOP to the Bill (briefing 0662 19-20 refers). One matter was raised by the Minister of Justice during LEG. The paper and proposed SOP have been referred to Cabinet on 23 September for a decision.
2. We understand that the Minister of Justice has concerns about the proposal to remove clause 55 and 56 of the Bill via the proposed SOP. This briefing provides further information on our rationale for recommending that these clauses be removed from the Bill, and our proposal for carrying out further work with a view to introduce new provisions in a future bill.
3. We recommend that you forward this briefing to the Minister of Justice, and to the Minister of Commerce and Consumer Affairs. Officials are also available to meet with you to discuss this ahead of Cabinet on 23 September, if you wish.

Rationale for the proposed removal of clauses 55 and 56

4. Clauses 55 and 56 (along with a related provision in schedule 3) of the Bill relate to how creditors of a bankrupt person that file a claim form after the deadline imposed by the Official Assignee ('late creditors') are to be treated. The reason that these clauses were introduced in the Bill is to provide flexibility for late creditors to be included in any distributions from a creditor's assets, along with creditors that submitted claim forms on time. The *Insolvency Act 2006* currently does not allow for this flexibility.
5. The proposed SOP to the Bill removes the interrelated clauses 55 and 56. The reason for this is because, after the Bill was reported back, we identified flaws in clause 56, which we consider need to be addressed before the Bill enters into force.
6. Clause 56 provides that the Official Assignee may include late creditors in the first distribution from a bankrupt's assets if the claim is made before that distribution. If the claim is made after the first distribution, clause 56 provides that the creditor is entitled to receive the benefit of the first distribution if there are assets remaining for distribution.
7. The flaw in clause 56 is its lack of clarity surrounding the effect of including late creditors in distributions after the first distribution. This has implications for central concepts in the *Insolvency Act*, such the priority of payments to preferential creditors and the *pari passu* principle. Under the *pari passu* principle, all creditors of a same class are entitled to equal distributions in proportion to the debts they are owed.
8. It is unclear how clause 56 affects:
 - a. the payments to creditors who were not late in filing a claim. It is unclear whether the Official Assignee would be obliged to seek to claw back money already distributed to on-time creditors to pay late claimants.
 - b. how payments towards two or more late claims will be treated. The provisions do not take account of the possibility that the first late claimant would receive a higher dividend than the last late claimant.
 - c. the payment to creditors of interest from surplus assets. Sections 265 and 266 of the *Insolvency Act* provide for interest payments to be made, but it is unclear how these provisions would affect the two different types of claimants.
9. We understand that the Minister of Justice is concerned that removing clauses 55 and 56 would remove the flexibility, that they are designed to provide, to include late creditors in distributions from a bankrupt's assets. We agree that this flexibility is needed. However, our

view is that there is a risk in attempting to address these issues through an SOP at the committee of the whole House stage.

10. These issues touch on fundamental principles of insolvency law. We consider that further policy work and consultation is needed on the desired effect of late claims, to get these provisions right and to avoid unintended consequences.
11. We also think that the time it would take to resolve these matters would delay the progress of Regulatory Systems Bill 2.

Our proposed approach to resolve the issues in clauses 55 and 56

12. Our proposed approach is to:
 - a. remove clauses 55 and 56 from the Bill
 - b. carry out further work on how late claims should be treated, taking into account links with other provisions in the Insolvency Act
 - c. introduce new clauses in the next regulatory systems bill.
13. This approach gives effect to the policy decisions behind clauses 55 and 56 [EG-16-MIN-0357 refers], while providing sufficient time to address all the issues discussed above. It also provides opportunities to further consult with key stakeholders such as the Insolvency and Trustee Service.
14. The next regulatory systems bill (Regulatory Systems Bill 3) is currently at the preparing drafting instructions stage, having received policy decisions from Cabinet in July 2019. We intend to provide a draft bill for you to take to Cabinet in March 2020 seeking approval for introduction to Parliament. If you and Cabinet agree with our approach above, new provisions for late creditors in the Insolvency Act could be included in that draft Bill.
15. As Cabinet has already agreed to the policy behind these clauses, no new decisions are needed if new clauses are to be introduced into a future bill.

Consultation

16. We have consulted with the Parliamentary Counsel Office. PCO agrees clause 56 is flawed for the reasons identified above.

Communications and risks

17. As discussed above, we consider that there are risks if the Bill were to be enacted with the current clauses 55 and 56. We also consider that attempting to address the flaws in these clauses through an SOP at the committee of the whole House stage also poses risks, because of the limited time available. We consider that further policy analysis and consultation is needed on the design of provisions relating to late creditors, to address unintended consequences.
18. If you and Cabinet agree to introduce the SOP to the Bill at the committee of the whole House stage, we will provide talking points setting out the reason for removing these clauses.

Next steps

19. We anticipate the following next steps:

- you forward a copy of this briefing to the Minister of Justice and the Minister of Commerce and Consumer Affairs
- we meet with you to discuss these matters later this week, if you wish
- Cabinet considers the Cabinet paper and proposed SOP on 23 September
- if Cabinet agrees, the SOP is introduced at the committee of the whole House stage of the Bill.

Annex

Annex 1: Proposed SOP to Regulatory Systems (Economic Development) Amendment (No 2) Bill.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Tuesday, 17 September 2019

**Regulatory Systems (Economic Development) Amendment Bill
(No 2)**

Proposed amendments

Hon Phil Twyford, in Committee, to move the following amendments:

Clauses 55 and 56

Delete *clauses 55 and 56* (page 19, line 33 to page 20, line 28).

Clause 78

In *clause 78*, after *new section 358B* (page 25, after line 7), insert:

358C Discharge does not release partners and others

A discharge under **section 358A** does not release any person who, at the date of discharge, was—

- (a) a business partner of the discharged debtor; or
- (b) a co-trustee with the discharged debtor; or
- (c) jointly bound or had made any contract with the discharged debtor; or
- (d) a guarantor or in the nature of a guarantor of the discharged debtor.

Schedule 3

In *Schedule 3*, delete *clause 16* (page 46, lines 30 to 36).

Explanatory note

This Supplementary Order Paper amends the Regulatory Systems (Economic Development) Amendment Bill (No 2).

Proposed amendments to
Regulatory Systems (Economic Development)
Amendment Bill (No 2)

SOP No 0

The changes in this Supplementary Order Paper relate to the amendments to the Insolvency Act 2006 in *Part 8* of the Bill. In summary, the Supplementary Order Paper—

- deletes the changes that apply when a creditor submits a late claim in a bankruptcy (*clauses 55 and 56* and an associated transitional provision). It is intended that a revised process for late claims will be included in a future Bill. Deleting the provisions from this Bill will allow more work to be done to ensure that the process is workable and fair and does not have unintended consequences (for example, in relation to the priority rules that apply to other creditors who have submitted claims within the required timeframe);
- adds *new section 358C*. This change clarifies that a discharge of a debtor after a distribution of money paid under a debt repayment order does not release other parties from any liability to pay a debt. These other parties may include, for example, a person who is jointly bound with the debtor or a guarantor. This is consistent with provisions that apply in the context of other discharges under the Insolvency Act 2006 (*see, for example, sections 306 and 377B*).

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.