

In scope excerpts from the MBIE briefing paper *Fiscal Sustainability options for the Workplace Relations and Safety Portfolio 27/11/2023* [Ref 2324 0920]

(Para numberings as per original paper)

Purpose

This briefing sets out reprioritisation options in the Workplace Relations and Safety portfolio to support the Government's fiscal objectives.

Executive summary

This briefing provides you with background information on expenditure and savings opportunities within the Workplace Relations and Safety portfolio.

The key opportunity for savings and reprioritisation that you may wish to explore with officials is s 9(2)(f)(iv) from the MBIE's Employment Services branch achieved by ceasing the current Fair Pay Agreements (FPA) work programme. This includes both departmental and non-departmental spending.

[remainder of section out of Scope]

Recommended actions

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

b Note that:

- i. this Workplace Relations and Safety Portfolio briefing identifies options of up to s 9(2)(f)(iv), for your consideration

Noted

- c **Note** the proposed savings s 9(2)(f)(iv) and reprioritisation opportunities s 9(2)(f)(iv) that would arise from ceasing Fair Pay Agreements activities, including s 9(2)(f)(iv)

Noted

Strategic choices for Reprioritisation in the Workplace Relations and Safety Portfolio

1. This paper sets out the key choices on where and how you may wish to invest, reprioritise, or deliver savings in the Workplace Relations and Safety Portfolio.

Opportunities for Savings and Reprioritisation in Your Portfolio

4. Any savings or reprioritisation within your portfolio will require trade-offs to ensure that both the ERES and HSW regulatory systems remain sufficiently resourced to maintain their respective systems and deliver on your priorities as Minister.
 - Savings from the cessation of Fair Pay Agreement (FPA) activities, yielding § 9(2)(f)(iv) and proposed reprioritisation of § 9(2)(f)(iv).
5. The cessation of the current FPA work programme will yield savings. Given the early stage of FPA bargaining processes, some FPA-funded resources are currently reinforcing existing employment services. Demand for employment relations services in Q1 2023/24 shows volumes are tracking significantly higher than 2022/23. Reprioritising some FPA funding would allow MBIE frontline services and the ERA to maintain service delivery levels amid rising demand, while returning significant departmental and non-departmental savings.

Fiscal Background for the Workplace Relations and Safety Portfolio

The Recent History of Funding in Your Portfolio

MBIE Employment Services

19. Over the last five years MBIE and the ERA have received the following new ongoing operational funding:
 - \$12.952m² for the Fair Payment Agreements work programme (introduced in 2021/22)
20. Additionally, fixed term funding was also received between 2018/19 and 2022/23 to deliver time-limited work to deliver specific activities on [out of scope, FPAs, [out of scope]]. All this fixed-term funding has ended by 2023/24.

§ 9(2)(f)(iv)

Opportunities for Reprioritisation in your Portfolio

Departmental Savings and Reprioritisation Opportunity: Winding-up the FPA Work Programme

27. MBIE and the ERA received funding in Budgets 2021 and 2022 to operationalise the FPA system. To allow for recruitment and training for effective operations, operational capacity for FPAs was brought online ahead of the anticipated go-live date (1 December 2022), and in sequence. Through the Budget process, it was also agreed that MBIE and the ERA would use FPA-funded resources to support existing employment services until any FPA casework commenced given uncertainties over how processes would progress, such as in the ERA. In addition to providing vital capacity for core employment services, this also ensured any new mediators, Labour Inspectors and ERA members would be fully trained when FPA-related work arose.
28. With the FPA system being repealed³, some savings can be made from 2024/25 in the three appropriations that received FPA increases, as detailed in Table 2.

Table 2: FPA Budget and Proposed Savings/Reprioritisation

Appropriation	2024/25 budget	s 9(2)(f)(iv)
<i>Employment Relations Services</i> (Departmental)	\$63.848m, of which \$13.211m was provided through Fair Pay Agreement Budget bids.	
<i>Employment Relations Authority Members' Salaries and Allowances PLA</i> (Non-departmental)	\$8.657m ⁴ , of which \$1.771m was provided through Fair Pay Agreement Budget bids.	
<i>Support for Fair Pay Agreements and Screen Industry occupational bargaining</i> (Non-departmental)	\$0.994m, of which \$0.750m was earmarked for Fair Pay Agreements. Remainder of appropriation is grants for bargaining processes under different legislation, the Screen Industry Workers Act 2022.	
	Total	

³ Briefing Ref 2324-0918.

⁴ The appropriation rises in 24/25 due to the new Budget 23-funded ERA Members. This is only funded part-year in 2023/24 to account for recruitment of the positions, but full year in out years.

The reprioritisation of s 9(2)(f)(iv)

above will allow MBIE and the ERA to maintain service delivery levels under general employment legislation. Given delays in FPA legislation coming into force and the early stage of FPA bargaining processes, FPA-funded resources are helping meet general demand for employment relations services.

Non-Departmental Savings Opportunities

34. As Minister for Workplace Relations and Safety, you are also able to undertake savings and reprioritisation exercises in relation to the non-departmental expenditure in your portfolio.

Employment Relations Authority

35. Savings in the Crown's non-departmental investment in the ERA can only be realised by reducing the number of ERA members. Once appointed, members can only be removed before the conclusion of their term for reasons set out in the Employment Relations Act (e.g. serious misconduct or bankruptcy), unless they resign.
36. There are currently 26 ERA members, with this number reducing to 24 in March 2024.⁵ The ERA member salary appropriation has funding for 31 ERA members. Of these, seven members were funded through FPAs, and a further seven new roles were funded in Budget 23 (these are currently vacant).
37. Given the same number of member roles were funded through FPAs and created through Budget 23, it is possible to repurpose the Budget 23 funding to retain the seven FPA members who have already been appointed and are currently in their roles. This will free up FPA resourcing to be returned to the Crown as savings.

⁵ One member has been temporarily appointed until the end of 2023 (Alastair Dumbleton), and another member will retire at the end of his current term in February 2024 (Mike Loftus).

Annex One: Fiscal Summary for the Workplace Relations and Safety Portfolio

Table Excerpt:

Fiscal Sustainability

The following table summarises options identified for reprioritisation within Workplace Relations and Safety Portfolio (either within the portfolio, or for return to the centre). This includes programmes that could be stopped, and others that can be scaled.

Option for reprioritisation	s 9(2)(f)(iv)	s 9(2)(f)(iv)	Implementation	Comment
Savings from Ceasing Fair Pay Agreement Work Programme*			To be managed through Employment Services branch	s 9(2)(f)(iv)
Reprioritisation from Ceasing Fair Pay Agreement Work Programme			To be managed through Employment Services Branch	Reprioritisation will allow MBIE and the ERA to maintain service delivery levels under general employment legislation

Table Excerpt:

Manifesto Commitments/Coalition Agreement

The Government Coalition has made a number of commitments in, or relating to, the Workplace Relations and Safety Portfolio. The high-level costing estimates are set out below these manifesto commitments are as follows:

Source	Manifesto Commitment/Coalition Agreement	High level cost estimate \$million pa	FTE implication	Implementation	Comment on estimates
Act	Repeal the Fair Pay Agreement regime by Christmas 2023	Policy work costs to be managed through reprioritisation within policy baselines	To be managed within existing capacity	By 24/12/2023	Assumes work to be resourced from within existing policy resource through internal reprioritisation

From: [Beth Goodwin](#)
To: [Zach Boyle \(Parliament\)](#)
Cc: [Carolyn Tremain](#); [Nic Blakeley](#); [Suzanne Stew](#); [Katherine Macneill](#); [Anna Clark](#); [Hannah Adams](#); [Stacey Campbell](#)
Subject: 2324-0918 Repeal of the Fair Pay Agreements legislation IN-CONFIDENCE
Date: Tuesday, 28 November 2023 9:20:23 am
Attachments: [Draft Cabinet paper Repeal of Fair Pay Agreements legislation.docx](#)
[Draft Cabinet paper Repeal of Fair Pay Agreements legislation.pdf](#)
[2324-0918 Repeal of the Fair Pay Agreements legislation.docx](#)
[2324-0918 Repeal of the Fair Pay Agreements legislation.pdf](#)

Kia ora Zach

Ahead of our meeting with Minister van Velden this afternoon, attached is briefing **2324-0918 Repeal of the Fair Pay Agreements legislation**, and draft Cabinet paper. Let me know if you need printed copies.

MBIE people – we'll deliver you a printed copy.

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
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Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand



BRIEFING

Repeal of the Fair Pay Agreements legislation

Date:	28 November 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-0918

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Provide comments on the draft Cabinet paper attached. Arrange for the Cabinet paper to go straight to Cabinet on 4 December. Indicate your preference in relation to grant funding for FPA bargaining sides.	30 November 2023

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Beth Goodwin	Manager, Employment Relations Policy		s 9(2)(a)
Hannah Adams	Principal Advisor, Employment Relations Policy	04 896 5262	

The following departments/agencies have been consulted
Treasury, Ministry of Justice, and Parliamentary Counsel Office.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Repeal of the Fair Pay Agreements legislation

Date:	28 November 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-0918

Purpose

This briefing seeks your decision on the initial steps to repeal the Fair Pay Agreements (FPA) legislation.

Executive summary

The legislative timeframes will need to be significantly shortened to achieve your timeframe

The National and ACT Parties' coalition agreement commits to repeal the Fair Pay Agreements (FPA) regime by Christmas 2023. We are ready to support you to achieve this. It will require the timeframes for each step to be significantly reduced from normal. In particular:

- The Cabinet paper seeking approval for the policy will need to be lodged this week for consideration by Cabinet on 4 December, omitting consideration by a Cabinet Committee. We have attached a draft Cabinet paper for your review.
- A very short timeframe will be available for Parliamentary Counsel Office (PCO) to draft the Bill (until 15 December). PCO advises that this timeframe is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December).
- The Ministry of Justice's Bill of Rights Act vet will need to be based on a near final draft of the Bill and they would only have 1-2 days, rather than the normal two weeks.
- The Cabinet paper seeking approval to introduce the Bill would need to be considered by Cabinet on 18 December, again omitting consideration by a Cabinet Committee.
- The Bill will need to be passed under urgency and receive Royal Assent in the week of 18 December.

There are operational implications of repealing the FPA legislation

The Ministry of Business, Innovation and Employment (MBIE) currently performs a range of FPA related functions required by the FPA Act, such as assessing and deciding on applications to initiate bargaining or be a bargaining party. Some of these functions involve statutory timeframes for decisions by the Chief Executive of MBIE. MBIE is legally required to continue performing these functions until any repeal takes effect and is funded to do so.

MBIE and the Employment Relations Authority (ERA) received funding in Budget 21 and Budget 22 to operationalise the FPA system. Due to delays in the legislative process and FPA bargaining, some FPA functions have not been needed to date, and this additional capacity has been used to address general demand in the employment system. Given the high demand for services across the employment system at present, decisions to remove or reduce FPA funding will have implications for service delivery. This is covered further in the Workplace Relations and Safety portfolio fiscal briefing (2324-0900 refers).

MBIE also received an additional allocation of grant funding to disburse to bargaining sides. This funding will continue to be provided to bargaining sides until the FPA system is repealed unless

Cabinet decides to stop providing it before then. s 9(2)(h) . If, however, you would prefer to stop providing this funding through new grants given the system is being repealed, you could seek a Cabinet decision on this, as part of the initial Cabinet decisions on repealing the FPA legislation. We seek a decision from you on this point.

Recommended action

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

- a **Note** Treasury indicated that MBIE would be granted a duplication exemption from Regulatory Impact Statement (RIS) requirements if MBIE provided the 2021 Fair Pay Agreement (FPA) RIS to accompany the Cabinet paper, together with a new 'coversheet' outlining any additional impacts of the repeal. *Noted*
- b **Note** MBIE has prepared the coversheet analysis to accompany the existing RIS and has received confirmation from the Treasury that we have met the requirements for the exemption. *Noted*
- c **Agree** to provide comments on the draft Cabinet paper attached in Annex Three by 29 November. *Agree / Disagree*
- d **Agree** to seek the permission of the Prime Minister's Office and Cabinet Office for the FPA repeal policy paper to be lodged this week and go straight to Cabinet on 4 December. *Agree / Disagree*
- e **Note** that drafting timeframes will be significantly truncated, but Parliamentary Counsel Office advises that passing a Bill before Christmas is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December). *Noted*
- f **Note** MBIE will continue to perform operational functions relating to FPAs until the repeal takes effect, where these are not discretionary under the *Fair Pay Agreements Act 2022*, and some involve statutory timeframes. *Noted*
- g **Note** that, some of the funding provided in Budget 21 and Budget 22 to operationalise the FPA system has created some additional capacity which is being used to address high demand for general employment services due to delays in FPA bargaining. *Noted*
- h **Note** MBIE received an allocation of grant funding to disburse to bargaining sides (\$59,375 per bargaining side, with a potential additional \$25,000 if membership of unions or employer associations on their side is low). *Noted*
- i **Indicate** whether you would prefer to:

Option 1: Continue to provide grant funding until the FPA legislation is repealed.	Option 1
	Or
Option 2: Seek Cabinet approval to stop accepting applications for grant funding while the FPA legislation is being repealed but continue to process existing applications.	Option 2

	Or
Option 3: Seek Cabinet approval to stop providing new grant funding while the FPA legislation is being repealed (this will mean existing applications on hand would not receive funding).	Option 3



Beth Goodwin
Manager, Employment Relations Policy
 Workplace Relations and Safety Policy, MBIE

28 / 11 / 2023

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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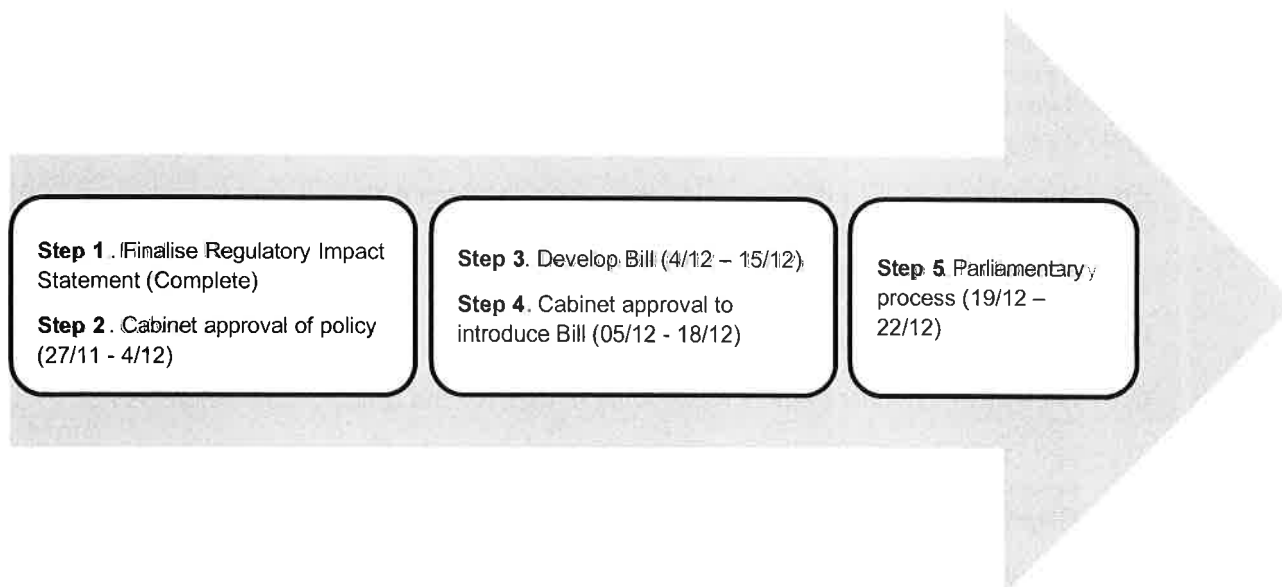
Background

1. In 2022, the government introduced legislation for a Fair Pay Agreements (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.
2. The National and ACT Parties' coalition agreement includes a commitment to repeal the FPA regime by Christmas. This will require the repeal of the:
 - a. *Fair Pay Agreements Act 2022*,
 - b. Fair Pay Agreements Regulations 2022,
 - c. consequential amendments made to other acts (eg the *Employment Relations Act 2000*),
 - d. amendments made to other regulations (eg the Employment Relations Authority Regulations 2000 and Employment Court Regulations 2000).
3. Repealing the FPA system also has implications for functions funded to administer and support the system, which sit within the Ministry of Business, Innovation and Employment (MBIE) and Employment Relations Authority (ERA), and the grant funding provided as part of the system.
4. This briefing includes advice on the process for repealing the FPA legislation by Christmas and seeks a decision on the grant funding available for bargaining sides. It also outlines some considerations in relation to the funding for FPA related functions (which will be covered in more detail in separate advice), the obligations that will continue to apply for stakeholders, and work programme discussions.

Repealing the FPA Act by Christmas will require shortening the timeframes for the legislative process

5. Repealing an Act, and associated regulations, requires the same steps as any Bill. The steps are to: develop a regulatory impact statement, seek Cabinet approval of the policy, draft the Bill, seek Cabinet approval to introduce the Bill, and for parliament to consider the Bill.
6. To repeal the FPA legislation by Christmas, it will be necessary to significantly condense or skip some of the steps involved in the legislative process. The steps outlined below assume the intended Bill covers a clear-cut policy to repeal the system, in a context where no FPAs have been finalised. We consider there is little chance that any FPAs would be finalised in this timeframe, given the current progress of initiated FPAs.
7. An indicative timeframe for each step is summarised in the diagram below, and then explained in the following sections. The intention is for some steps to occur simultaneously to reduce the overall timeframe.

Indicative timeframe for repealing the FPA legislation before Christmas



8. Annex One sets out the steps and indicative timeframes in greater depth and Annex Two includes a summary of the actions and decisions required to reduce the timeframes for each step.

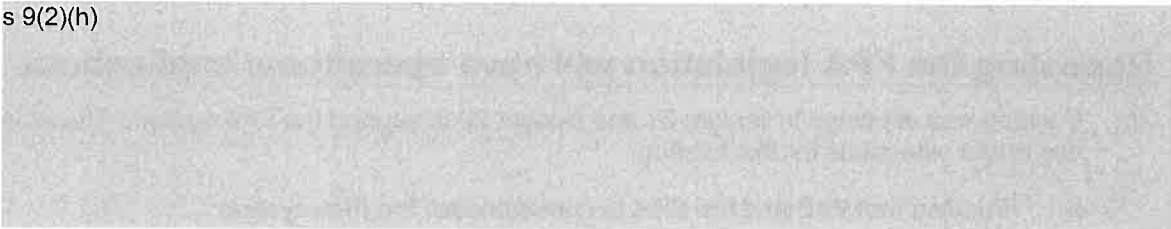
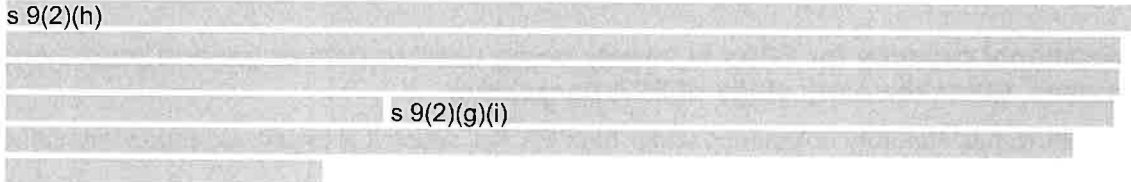

Step one: Regulatory Impact Statement

9. A Cabinet circular requires that, unless an exemption applies, any government regulatory proposals taken to Cabinet for approval that ultimately require creating, amending, or repealing Acts or secondary legislation must be accompanied by a RIS (which has been independently quality assessed and at least 'partially meets' the RIS quality requirements).
10. One of the grounds for granting an exemption is that "the relevant issues have already been adequately addressed by existing impact analysis". Treasury advised it would grant a duplication exemption if MBIE attaches the 2021 FPA RIS to the Cabinet paper, together with a supplementary 'coversheet' containing analysis of the impacts of repealing the FPA legislation. The granting of the exemption is based on the assumption that the policy proposal taken to Cabinet will be for a straightforward repeal of the entire FPA system.
11. MBIE have developed the supplementary coversheet and it has been through MBIE's quality assurance process. We have received confirmation from Treasury that we have, therefore, met the requirements for the exemption.

Step two: Cabinet approval of policy

12. We have prepared a draft Cabinet paper, which is attached at Annex Three (based on the existing Cabinet paper template).
13. We request you provide any comments on the draft Cabinet paper to us by 29 November. The Cabinet paper will need to be lodged on 30 November, which will allow no, or only minimal, time for consultation with other government agencies, Ministers, or coalition partners.
14. The Cabinet paper will need to be considered by Cabinet on 4 December, omitting any consideration by a Cabinet Committee. This will require the permission from the Prime Minister's Office and Cabinet Office – we recommend your office contact the Prime Minister's Office and Cabinet Office to arrange for this. MBIE's private secretary can assist with this.

Step three: Develop Bill

15. The Bill to repeal the FPA legislation is reasonably simple but will need to also cover the repeal of the associated regulations and the amendments made to other Acts and regulations when establishing the system (eg the *Employment Relations Act 2000*, the *Employment Relations Authority Regulations 2000* and the *Employment Court Regulations 2000*).
16. We have identified one technical change that was made to *Employment Court Regulations 2000* as part of the FPA related amendments that should be retained, as it fixed an error. This amendment made the figures for the fees for all *Employment Court* forms (not just the FPA related forms) GST-exclusive. We have included this as a recommendation in the draft Cabinet paper.
17. Parliamentary Counsel Office (PCO) does not normally begin drafting until a Cabinet decision directs them to do so and MBIE has provided drafting instructions. MBIE has drafting instructions ready, which we will be ready to share with PCO upon Cabinet policy approvals.
18. To achieve the intended repeal date, the timeframe for drafting the Bill will need to be significantly truncated, to approximately 1.5 weeks (4 to 15 December). PCO advises that this timeframe is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December).
19. The truncated timeframe will require that no or only standard transitional provisions are inserted. s 9(2)(h)
s 9(2)(h)

20. s 9(2)(h)

s 9(2)(g)(i)

21. The Ministry of Justice completes a Bill of Rights Act (BoRA) vet of all Bills. The CabGuide requires a final version of the Bill to be provided to the Ministry of Justice at least two weeks in advance of the Cabinet Legislation Committee meeting considering the Bill. To achieve the intended timeframe, the BoRA vet will need to instead occur in one to two days (approximately 11 to 12 December) and be based on a near final draft of the Bill (so that it can occur in parallel with the Bill being finalised). This is likely to require the BoRA advice to be caveated. We have alerted the Ministry of Justice of the commitment in the coalition agreement and will keep your office updated.

Step four: Cabinet approval to introduce Bill

22. Once the Bill is drafted, the next step is for you to seek approval from Cabinet to introduce the Bill, on 18 December. This will require:
 - a. MBIE to draft the Cabinet paper while the Bill is being developed (5 to 8 December),
 - b. you to review the draft and provide any feedback (11 to 14 December),

- c. the Cabinet paper to be lodged on 15 December. This is a day later than is standard practice to allow PCO an extra day for drafting of the Bill. We recommend your office seek approval from Cabinet Office to seek a late lodgement in advance. MBIE's private secretary can assist with this.
 - d. the Cabinet paper to be considered by Cabinet on 18 December, omitting any consideration by a Cabinet Committee. The draft Cabinet paper attached includes a recommendation seeking Cabinet approval for this.
23. The timeframes above assume no consultation occurs on the paper or draft Bill with other agencies, Ministers or coalition partners. Please advise us if consultation is required.

Step five: Parliamentary process

24. To achieve the intended timeframe, the Bill would need to be considered under urgency and pass through all the parliamentary stages on 19 and 20 December (with no Select Committee). Cabinet would need to approve that the Bill be considered under urgency. We have included this in the attached draft Cabinet paper. Before Cabinet approval is sought, MBIE's private secretary can work with your office to liaise with the Leader of the House's office, as the latter generally arranges the schedule of the House (including any motions for urgency).
25. Once the Bill has had its third reading, the Governor-General needs to sign it (Royal assent). This would need to occur within one or two days after the third reading. MBIE will work with the Clerk to expedite this, noting that it depends on the Governor-General's availability. The Act would then come into force the day after Royal Assent.

Repealing the FPA legislation will have operational implications

26. Funding was allocated in Budget 21 and Budget 22 to support the FPA system. There are two broad categories for this funding:
- a. Funding for MBIE and the ERA to operationalise the FPA system.
 - b. Grant funding for bargaining sides, disbursed via MBIE on application.

Operational capacity for FPAs is largely being used to deliver general employment services, given the early stage of FPA bargaining

27. MBIE has statutory obligations under the FPA Act, which it is legally required to continue performing until the legislation is repealed.
28. MBIE and the ERA received funding in Budget 21 and Budget 22 to deliver FPA related operational functions. For 23/24, this funding is approximately \$16.209 million in operating expenditure. This covers the following:
- a. providing information and education about the FPA system,
 - b. providing bargaining support services,
 - c. decision-making by the Chief Executive of MBIE (CE MBIE), who is required to assess and decide on applications to initiate bargaining for an FPA or be a bargaining party,
 - d. providing dispute resolution services (eg mediation and early resolution),
 - e. making determinations and monitoring and enforcing compliance with an FPA through the Labour Inspectorate,
 - f. the ERA making FPA-related determinations, including to resolve disputes.

29. Budget 21 and 22 funding provided for the significant expansion in MBIE and ERA capacity required to support the operation of the FPA system. This funding was deliberately phased to start ahead of the commencement of the system, ensuring that new operational frontline workers were recruited, trained and effective in their roles in time for the FPA system coming into force on 1 December 2022.
30. Due to delays in the legislative process and FPA bargaining, only the information and education, bargaining support service, and CE MBIE decision-making functions have been required for FPAs to date. This means that the dispute resolution, Labour Inspectorate and ERA capacity funded by FPAs is continuing to be used, as planned, to address high demand in the general employment system while awaiting FPA work. With the first FPA bargaining commencing on 20 September 2023, this was expected to escalate significantly from Quarter 2 2023/24.
31. These core employment services are under considerable demand pressures. This is largely due to high demand in the system for services to address migrant exploitation, support the Recognised Seasonal Employer scheme, and resolve employment disputes (through both mediation and the ERA). More advice about this is in the Workplace Relations and Safety portfolio fiscal briefing (2324-0900 refers)

You could seek Cabinet approval to stop providing grant funding to bargaining sides while the legislation is being repealed

32. To support capability and capacity during bargaining for both FPAs and occupational contracts under the *Screen Industry Workers Act 2022* (SIWA), Cabinet decided that:
 - a. the peak bodies (the New Zealand Council of Trade Unions (NZCTU) and BusinessNZ) would be given \$250,000 each per annum, for three years, with specified funding conditions to build capacity and capability to support the FPA system [CAB-21-MIN-0126 and DEV-21-MIN-0173],
 - b. a one-off contribution of \$50,000 would be available to each FPA and SIWA bargaining side (for FPAs, this funding is capped at 12 bargaining sides per year) [CAB-21-MIN-0126],
 - c. an additional contribution of up to \$25,000 to each FPA and SIWA bargaining side if less than 20 per cent of those in coverage on their side is a member of a union or industry group (as relevant) (for FPAs, capped at six bargaining sides per year) [CAB-21-MIN-0126].
33. NZCTU has received the three payments of \$250,000 for the work it has done and is undertaking (including work in respect to SIWA). BusinessNZ did not accept the funding, and the funding was partially redistributed to the Screen Production and Development Association for SIWA purposes, with the remainder being used to increase the one-off contribution available for each FPA and SIWA bargaining side to \$59,375 in 23/24 only.
34. MBIE is currently receiving and approving applications for the grant funding for FPA bargaining sides. As at 27 November 2023, six FPA bargaining sides have applied for and received the one-off contribution (\$356,250 disbursed) and six bargaining sides have applied for and received the additional contribution of \$25,000 (\$150,000 disbursed). In total, \$506,250 has been disbursed, meaning an additional \$356,250¹ could potentially be provided in the current financial year (if applied for). MBIE do not currently have any further applications being processed.
35. You have a choice about whether MBIE should:

¹ Up to six bargaining sides could apply for and receive \$59,375 each. No further bargaining side could receive the additional contribution of \$25,000 (as this was capped at six bargaining side per year).

- continue distributing the funding until the FPA Act is repealed, or
- stop accepting applications (but still process any funding applications already received), or
- stop funding any applications now (including not funding any applications already received).

36. s 9(2)(h)

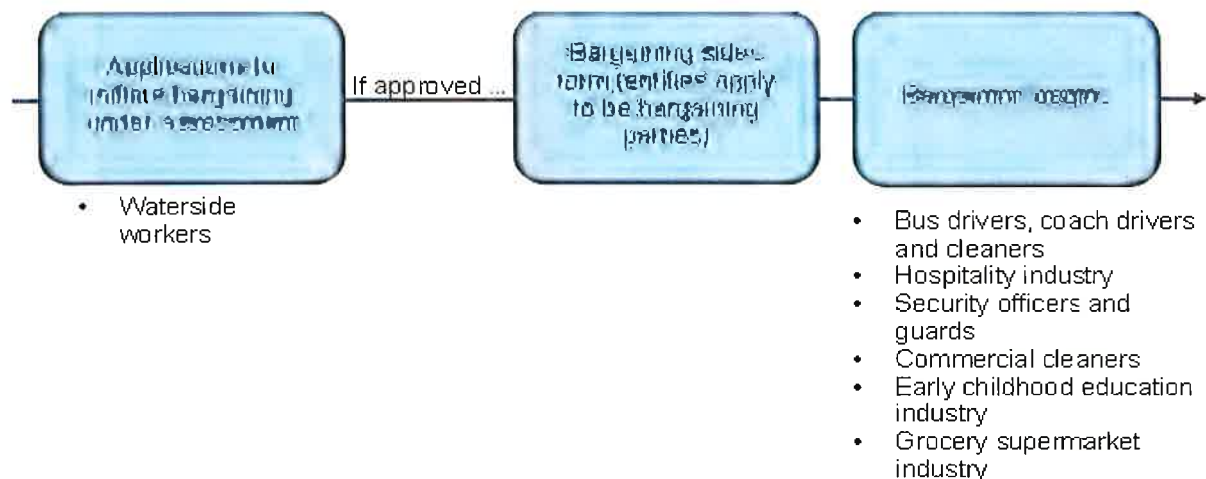
If you want to stop funding bargaining sides before the repeal takes effect, you can do this via a Cabinet decision. This could be sought as part of the initial Cabinet decisions regarding the repeal of the FPA legislation. The recommendations at the front of this briefing seek your direction on this point, and the attached Cabinet paper includes tentative text which we can remove if you want to continue the status quo.

37. s 9(2)(f)(iv)

Stakeholders involved in FPAs will need to continue to meet their legislated obligations until the FPA Act is repealed

38. As the FPA Act only came into force on 1 December 2022, the system is still in its early stages. As at 27 November 2023:
- six FPAs have been approved for initiation and the bargaining sides have formed, and
 - one initiation application is being assessed by MBIE.

Initial stages of the FPA process



39. The FPA that is the most progressed is the 'Bus drivers, coach drivers and cleaners' FPA for which bargaining sides formed on 28 June 2023. Bargaining between sides began in September 2023. Bargaining sides have formed for the other five initiated FPAs but we understand that the sides have not yet begun to bargain.
40. As your intention is to repeal the system by Christmas, we do not believe that any of the initiated FPAs will be finalised before the system is repealed, particularly due to the timeframes required to ratify an FPA.

- 41. Bargaining sides, bargaining parties and covered employers for initiated FPAs must continue to meet their obligations under the FPA Act until it is repealed. In particular:
 - a. employers will be required to meet the relevant notification requirements, and
 - b. bargaining parties and bargaining sides will be required to meet their good faith obligations.
- 42. As part of implementing the repeal of the FPA Act, MBIE will keep bargaining parties (or applicants) updated about the Government's decisions, timing of the repeal, and what this means for their current obligations.

s 9(2)(f)(iv)

- 43. The FPA system was developed to address issues identified in the labour market. In the RIS developed to consider the implementation of the FPA system, MBIE identified the following issues:
 - a. In some sectors/occupations and in some circumstances, the current collective bargaining framework is not providing adequate mechanisms to mitigate the inherent imbalance of bargaining power in the employment context. There is evidence that wages have not kept up with productivity improvements in recent decades. While there are many potential factors, an imbalance of bargaining power is likely to be a contributor.
 - b. In some labour-intensive sectors of the economy, employers may be able to compete by holding down or reducing terms and conditions offered to workers, often described as a 'race to the bottom'. National minimum standards provide some protections for workers, but the suitability of minimum terms and conditions will differ depending on the workforce.
- 44. The FPA Working Group, which included a BusinessNZ representative, concluded that a mature 21st century labour market in New Zealand will require stronger dialogue between employers and workers. Repealing the FPA system will mean there will be no intervention in the employment relations and employment standards system focused on improving the dialogue between employers and workers to address the identified issues.

45. s 9(2)(f)(iv)

- a. [Redacted]
- b. [Redacted]

46. s 9(2)(f)(iv)

Next steps

47. We will update the draft Cabinet paper based on your decisions in this briefing and any feedback you provide, in preparation for lodging it later this week.

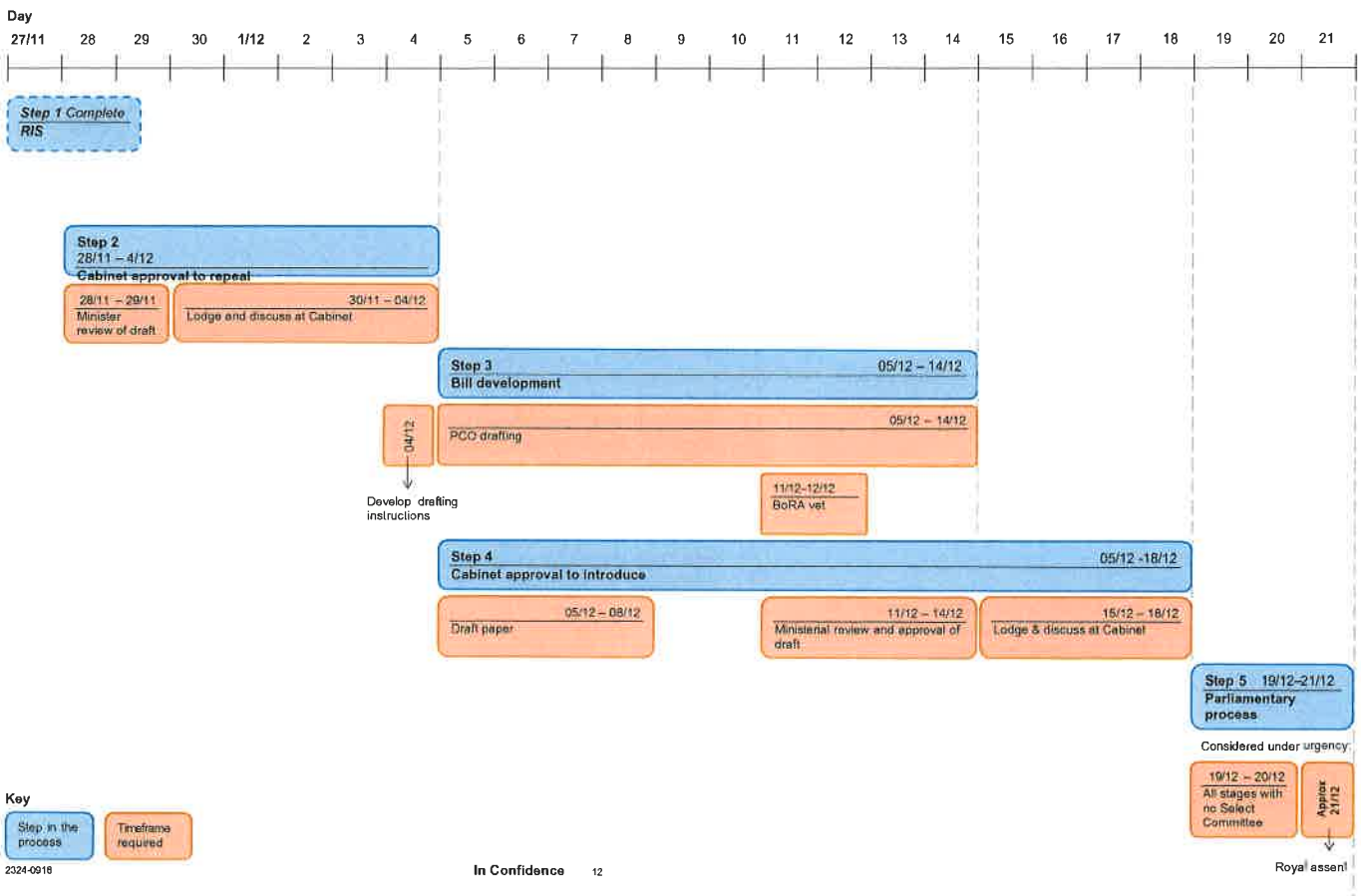
Annexes

Annex One: Indicative timeframes for repealing the FPA legislation before Christmas

Annex Two: Actions and decisions required to shorten the timeframe for repealing the FPA legislation

Annex Three: Draft Cabinet paper "Repeal of the Fair Pay Agreements legislation"

Annex One: Indicative timeframes for repealing the FPA legislation before Christmas



Annex Two: Actions and decisions required to shorten the timeframe for repealing the FPA legislation

Step	Options for shortening the timeframe	Action or decision required	
		Minister / Minister's Office	MBIE
1: Regulatory Impact Statement	<ul style="list-style-type: none"> Treasury advised it would grant a duplication exemption if MBIE attaches the 2021 FPA RIS to the Cabinet paper, together with a supplementary 'coversheet' containing analysis of the impacts of repealing the FPA legislation. MBIE has prepared the coversheet analysis to accompany the 2021 FPA RIS and FPA repeal Cabinet paper. 		<ul style="list-style-type: none"> No further action required, as Treasury has confirmed that the requirements for the exemption have been met.
2: Cabinet approval of the policy to repeal the FPA system	<ul style="list-style-type: none"> Skip agency, Ministerial, and coalition partner consultation. Take the paper to Cabinet on 4 December without first going to Cabinet Committee. 	<ul style="list-style-type: none"> Work with the Prime Minister's Office and Cabinet Office to add the FPA repeal paper to the agenda for the 4 December Cabinet meeting. Confirm that no consultation with agencies, Ministers and coalition partners is required. Provide feedback on the draft Cabinet paper by 29 November. Approve final Cabinet paper (once MBIE has loaded it into CabNet) for lodging on 30 November. 	<ul style="list-style-type: none"> Incorporate Minister's feedback and decisions in the draft Cabinet paper. MBIE upload final Cabinet paper in CabNet on 30 November.
3: Develop the Bill	<ul style="list-style-type: none"> Drafting instructions prepared in advance and finalised the day Cabinet confirms the policy. Prioritise drafting and BoRA vet (note this would require a significantly reduced timeframe from what PCO and Ministry of Justice indicated is required). BoRA vet based on a near final draft. 		<ul style="list-style-type: none"> Prepare drafting instructions in advance. Support PCO via quick turnaround of reviews of draft Bills etc. Arrange with Ministry of Justice for the timeframe for the BoRA vet to be significantly reduced Provide draft Bills to the Ministry of Justice so that the BoRA vet can

			occur at the same time as the Bill is being drafted.
4: Cabinet approval to introduce the Bill	<ul style="list-style-type: none"> • Develop Cabinet paper while Bill is being drafted. • Skip agency, Ministerial, and coalition partner consultation (or hold a very short consultation). • Take the item or paper straight to Cabinet on 18 December without first going to Cabinet Committee. 	<ul style="list-style-type: none"> • Work with the Prime Minister's Office and Cabinet Office to add the FPA repeal paper to the agenda for the 18 December Cabinet meeting. • Confirm that no consultation with agencies, Ministers and coalition partners is required (or a very short consultation is required), • Provide feedback on a draft Cabinet paper while the Bill is being drafted (by 14 December). • Seek approval for a late lodgement from the Cabinet Office in advance. • Approve final Cabinet paper (once MBIE has loaded it into CabNet) for lodging on 15 December. 	<ul style="list-style-type: none"> • Develop the draft Cabinet paper and provide to the Minister to review. • Incorporate Minister's feedback in the draft Cabinet paper and finalise for lodging. • MBIE upload final Cabinet paper in CabNet on 15 December (this timeframe requires a late lodgement of the Cabinet paper).
5: Parliamentary process	<ul style="list-style-type: none"> • Bill considered under urgency. • Royal assent arranged to occur one or two days after third reading. 	<ul style="list-style-type: none"> • Liaise with the Leader of the House's office to confirm the Bill can be progressed under urgency, and seek Cabinet approval for his (as part of the Cabinet paper seeking approval to introduce). 	<ul style="list-style-type: none"> • Coordinate the timing of Royal assent with the Clerk.

Annex Three: Draft Cabinet paper ‘Repeal of Fair Pay Agreements legislation’

From: Hannah Adams
To: Zach Boyle (Workplace)
Cc: Beth Goodwin (Ministry of Business, Innovation and Employment)
Subject: RE: Question on FPA's CAB paper (IN CONFIDENCE)
Date: Wednesday, 29 November 2023 12:16:00 pm

Ka ora Zach

The information requested by the Minister in relation to the FPA appeal is below.

§ 9(2)(h)

§ 9(2)(h)

Can we provide a list of the bargaining sides that have been provided the grant funding thus far?

FPA Ref Number	Industry/Occupation	Funding paid in draft (Bills Nov 2023)	Employer Entity receiving funding (on behalf)	Employee Entity receiving funding (on behalf)
FPA-01-003-2022	Bus drivers, coach drivers and cleaners	Employee Side: Funding actioned for \$50,375	Hik & Coach Association(NZ) Inc	Council of Trade Unions
FPA-01-008-2023	Early Childhood Industry	Employee Side: Funding not yet requested		
FPA-01-001-2022	Hospitality Industry	Employee Side: Funding actioned for \$50,375 and \$25,000		Unite Union
FPA-02-006-2023	Security Guards and Officers	Employee Side: Funding actioned for \$50,375 and \$25,000		EO Union (New Zealand) Incorporated
FPA-02-007-2023	Commercial Cleaners	Employee Side: Funding actioned for \$50,375 and \$25,000		EO Union (New Zealand) Incorporated
FPA-01-004-2022	Grocery supermarket industry	Employee Side: Funding actioned for \$50,375 and \$25,000		Fair Union

Please note we have realised that the numbers in the BIM and draft Cabinet papers were incorrect, as only five (and not six) bargaining sides have received the additional contribution of \$25,000. We will update the figures in the draft Cabinet paper (if the Minister wants to seek a decision on this). The figures in para 24 of the briefing & para 20 of the Cabinet paper should be:

MBIE is currently reviewing and approving applications for the grant funding for FPA bargaining sides. As at 27 November 2023, six FPA bargaining sides have applied for and received the one-off contribution (\$35,250 disbursed) and five bargaining sides have applied for and received the additional contribution of \$25,000 (\$125,500 disbursed). In total, \$381,350 has been disbursed, meaning an additional \$381,350 could potentially be provided in the current financial year (if applied for). MBIE do not currently have any further applications being processed.

Sorry for this error.

Ngā mihi
Hannah

Hannah Adams
Principal Policy Advisor

Employment Relations Policy, Labour, Science and Enterprise Branch
Hikina Whaitiriaki | Ministry of Business, Innovation & Employment

Imē: h.adams@mbie.govt.nz | Waea tāwhiri: +64 4 393 5262
Please note my working hours are 9:15am - 2:30pm Mon-Wed and 9am - 6pm Thurs

From: Zach Boyle <zach.boyle@parliament.govt.nz>
Sent: Wednesday 29 November 2023 10:11 am
To: Beth Goodwin <beth.goodwin@mbie.govt.nz>
Subject: FW: Question on FPA's CAB paper

Hi Beth,

In addition to the below question, a couple other requests/proposed amendments on the CAB paper below:

- Can we add a para up front in the paper – preferably in the executive summary – that explains why it's appropriate that the Bill is being passed under urgency? Something in the vein of the final sentence of para 11, while also emphasising that transitional arrangements have the potential to become more complicated and costly if we wait and undergo the full parliamentary process
- Not for the CAB paper, but separately can we provide a list of the bargaining sides that have been provided the grant funding thus far?

Thanks

Zach

From: Zach Boyle
Sent: Wednesday, 29 November 2023 8:21 AM
To: Beth Goodwin <beth.goodwin@mbie.govt.nz>
Subject: Question on FPA's CAB paper

Hi Beth,

§ 9(2)(h)

Be great to have a response by noon, if possible, thank!

Zach Boyle | Private Secretary (Workplace Relations and Safety)

§ 9(2)(h)

From: [Raymond Chen](#)
To: [Zach Boyle \(Parliament\)](#); [Ministerial Services](#); [Caspian Leah \(Parliament\)](#)
Cc: [Beth Goodwin](#); [Stacey Campbell](#); [Anna Clark](#); [Nikita Decruy](#); [Charlotte De Feijter](#)
Subject: 2324-1084 - FPA Repeal Cabinet paper Cover Briefing and Cabinet paper UNCLASSIFIED
Date: Wednesday, 29 November 2023 4:04:40 pm
Attachments: [2324-1084 Final Cabinet Paper - Repeal of the Fair Pay Agreements Legislation.docx](#)
[2324-1084 Final Cabinet Paper - Repeal of the Fair Pay Agreements Legislation.pdf](#)
[Annex Two- Cabinet Paper – Repeal of the Fair Pay Agreements legislation \(marked up version for review\).docx](#)
[Annex Two- Cabinet Paper – Repeal of the Fair Pay Agreements legislation \(marked up version for review\).pdf](#)
[Annex Three - Cabinet Paper Repeal of the Fair Pay Agreements legislation \(final version for lodgement\).docx](#)
[Annex Three - Cabinet Paper Repeal of the Fair Pay Agreements legislation \(final version for lodgement\).pdf](#)
[Annex Four - Coversheet to FPA Regulatory Impact Statement 2023.pdf](#)
[Annex Five - Fair Pay Agreements Regulatory Impact Statement 2021.pdf](#)

Hi Zach,

Attached is the cover briefing **2324-1084 Final Cabinet Paper – Repeal of the Fair Pay Agreement Legislation**, which includes Annex One - Talking points for the Cabinet meeting on Monday, 4 December 2023.

We also attach the annexes:

- Annex Two: Cabinet Paper – Repeal of the Fair Pay Agreements legislation (marked up version for review)
- Annex Three: Cabinet Paper – Repeal of the Fair Pay Agreements legislation (final version for lodgement)
- Annex Four: Coversheet to Fair Pay Agreements Regulatory Impact Statement 2023
- Annex Five: Fair Pay Agreements Regulatory Impact Statement 2021

We will bring over the 35 hard copies of the RIS and Coversheet tomorrow.

Thanks,

Raymond Chen (He/Him)

PA TO Hayden Fenwick | Manager, Health and Safety Policy

PA TO Beth Goodwin | Employment Relations Policy

PA TO Alison Marris | Manager, Employment Standards Policy

PA TO TRACY MEARS | Directors

Workplace Relations and Safety Policy Branch

Labour, Science and Enterprise Group

Ministry of Business, Innovation & Employment (MBIE)

raymond.chen@mbie.govt.nz |

Level 6, 15 Stout Street, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

NZBN 9429000106078



BRIEFING

Final Cabinet Paper – Repeal of the Fair Pay Agreements legislation

Date:	29 November 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-1084

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations & Safety	Agree to lodge the Cabinet paper <i>Repeal of the Fair Pay Agreements legislation</i> with the Cabinet Office on Thursday, 30 November 2023.	30 November 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	s 9(2)(a)	✓
Stacey Campbell	Senior Policy Advisor, Employment Relations Policy	04 901 4139		

The following departments/agencies have been consulted
N/A.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Final Cabinet Paper – Repeal of the Fair Pay Agreements legislation

Date:	29 November 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-1084

Purpose

This briefing provides you with the final Cabinet paper *Repeal of the Fair Pay Agreements legislation* and seeks your agreement to lodge the paper. It also provides talking points for the Cabinet meeting on Monday, 4 December 2023.

Recommended action

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

- a **Agree** to lodge the Cabinet paper *Repeal of the Fair Pay Agreements legislation* with the Cabinet Office on Thursday, 30 November 2023.

Agree / Disagree

- b **Note** the intention is for the Cabinet paper *Repeal of the Fair Pay Agreements legislation* to go straight to Cabinet for consideration on Monday, 4 December 2023.

Noted

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

29 / 11 / 23

Hon Brooke van Velden
Minister for Workplace Relations & Safety

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Background

1. The National and ACT parties' coalition agreement committed to repealing the Fair Pay Agreements (FPA) regime by Christmas.
2. To support this commitment, officials provided you with advice on repealing the FPA legislation and a draft Cabinet paper on Tuesday, 28 November 2023 (briefing 2324-0918 refers).
3. We have made some minor changes to the Cabinet paper, since providing you the previous version, that are marked up in the Cabinet paper for your review (attached at **Annex Two**). The final Cabinet paper is attached at **Annex Three** which, subject to your approval, is ready for lodgement on Thursday, 30 November 2023.
4. The FPA Regulatory Impact Statement (RIS) Coversheet (at **Annex Four**) and the 2021 FPA RIS (at **Annex Five**) should be attached to the Cabinet paper at lodgement.
5. We have also provided talking points at **Annex One** to support you at Cabinet on Monday, 4 December 2023.

We have made some minor changes to the Cabinet paper since we provided you a draft on 28 November 2023

We have amended the Cabinet paper to reflect your decision about grant funding for bargaining parties and other requested changes

6. We amended the Cabinet paper to reflect your decision to seek Cabinet approval to stop providing new grant funding while the FPA legislation is being repealed. This change is made in paragraph 23 and recommendation 10.
7. We have added in new paragraph four and 13 which provide more detail on the rationale for requiring the Bill to be considered under urgency, on request of your office. The rationale includes that a standard parliamentary process increases the risk that an FPA is finalised while the FPA legislation is being repealed, which would then increase the complexity associated with the repeal Bill.
8. We also amended paragraph 22 (and the corresponding footnote) to make a correction to the amount of funding that had been dispersed, as five (not six) bargaining sides have received the additional contribution of \$25,000.

We received minor feedback from Cabinet Office on the draft Cabinet paper that has now been reflected in the Cabinet paper

9. We received feedback from the Cabinet Office on the recommendations in the Cabinet paper, since we sent it to you. They suggested the following minor changes that have been amended in the Cabinet paper:
 - a. Minor amendments to recommendation seven to clarify that the Bill should be added to the next legislative programme with the intention that it be passed by the end of 2023.
 - b. Minor amendments to recommendation eight and paragraph 18 to reflect the intention that there will not be any Cabinet Legislative Committee sittings for the remainder of 2023.
 - c. Changing recommendation nine from an 'agree' recommendation to a 'noting' recommendation about the Bill needing to pass through the parliamentary stages under urgency. This reflects that standard practice that urgency is undertaken by a motion in

the House, by the Minister in charge of the Bill (as opposed to agreed by Cabinet). This means you will need to file a motion to move that the Bill be passed through all parliamentary stages under urgency. Your office may wish to confirm this process and the wording of the motion with the office for the Leader of the House. This change is also reflected in paragraph 20 of the paper.

Next steps

10. Once you have approved the final Cabinet paper:
 - a. MBIE officials will load the Cabinet paper, FPA RIS Coversheet, and the 2021 FPA RIS in Cabinet and,
 - b. notify your office when it is ready for their approval for lodging.
11. Once the Cabinet paper, Coversheet to the FPA RIS, and the 2021 FPA RIS are lodged, there are a number of steps that need to happen in quick succession with the intention now being that Cabinet considers the Cabinet paper to introduce the Bill on Monday, 11 December 2023. These are set out below.

Key stage	Timeframe
Cabinet considers policy Cabinet paper	4 December
MBIE to provide you with a draft Cabinet paper to introduce Bill	5 December
Your review of Cabinet paper	6 December
MBIE updates Cabinet paper to reflect any changes you ask for, and sends final to your office	7 December
PCO draft the Bill	4-7 December
Ministry of Justice undertake Bill of Rights vet on Bill	7 December
Lodge Cabinet paper to introduce Bill (late lodgement)	8 December
Cabinet considers Cabinet paper to introduce Bill	11 December
Bill introduced and all parliamentary stages undertaken (approx.)	12-13 December
Royal assent (approx.)	14-15 December

Annexes

Annex One: Talking points for the Cabinet meeting on Monday, 4 December 2023

Annex Two: Cabinet Paper – Repeal of the Fair Pay Agreements legislation (marked up version for review)

Annex Three: Cabinet Paper – Repeal of the Fair Pay Agreements legislation (final version for lodgement)

Annex Four: Coversheet to Fair Pay Agreements Regulatory Impact Statement 2023

Annex Five: Fair Pay Agreements Regulatory Impact Statement 2021

Annex One: Talking points for the Cabinet meeting on Monday, 4 December 2023

- We have committed to repealing the FPA legislation by Christmas 2023 as part of the Coalition Agreement between the National Party and the ACT party.
- I seek Cabinet's agreement to repeal the FPA legislation and all amendments made to other Acts or Regulations that relate to the FPA system.
- As no agreements have been finalised in any industry or occupation, there are no transitional arrangements required for the FPAs that have been initiated. s 9(2)(h)
- Cabinet had previously decided that Bargaining Sides should be able to apply for and receive funding to contribute to the costs associated with bargaining.
- 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 from tomorrow. This means applications that have already been received but not yet approved will not receive the funding.
- To repeal the FPA legislation by Christmas, the Bill will need to be considered directly by Cabinet on 11 December 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.

If you would like to describe the reasons for repealing the FPA legislation:

- Our reasons for repealing the FPA legislation are:
 - The FPA 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.
 - This undermines the flexible labour market which has been a pillar for New Zealand's economic success for the past three decades.
- The quicker this Act is repealed the sooner businesses can have certainty that no new requirements will be added to the minimum employment terms they currently need to provide their employees.

If you would like to mention retaining the technical change to express fees as GST-free

- I am seeking agreement to retain a technical change made to the Employment Court Regulations 2000 that expressed the fees for forms applying to the Employment Court to be GST-exclusive.
- This change was made to prevent confusion as the fees included in the regulations are different from what the Employment Court can charge because GST increased in 2010.
- The Bill would, therefore, remove the reference to FPA forms (and associated fees) in the *Employment Court Regulations 2000* but the fees for the non-FPA forms would continue to be expressed as GST-exclusive.

If you are asked about what is happening with the funding of the FPA system

- MBIE and the Employment Relations Authority received funding to operationalise the FPA system. I have received advice about this funding and am currently considering it.

**Annex Two: Cabinet Paper – Repeal of the Fair Pay Agreements
legislation (marked up version for review)**

**Annex Three: Cabinet Paper – Repeal of the Fair Pay Agreements
legislation (final version for lodgement)**

Annex Four: Coversheet to Fair Pay Agreements Regulatory Impact Statement 2023

Annex Five: Fair Pay Agreements Regulatory Impact Statement 2021



BRIEFING

Final Cabinet Paper – Fair Pay Agreements Act Repeal Bill: Approval for Introduction

Date:	7 December 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-1140

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations & Safety	Agree to lodge the Cabinet paper <i>Fair Pay Agreements Act Repeal Bill – Approval for Introduction</i> with the Cabinet Office on Friday, 8 December 2023.	8 December 2023

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Beth Goodwin	Manager, Employment Relations Policy		s.9(2)(a)
Stacey Campbell	Senior Policy Advisor, Employment Relations Policy	04 901 4139	

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Final Cabinet Paper – Fair Pay Agreements Act Repeal Bill: Approval for Introduction

Date:	7 December 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-1140

Purpose

This briefing provides you with the final Cabinet paper *Fair Pay Agreements Act Repeal Bill: Approval for Introduction* and seeks your agreement to lodge the paper. It also provides talking points for the Cabinet meeting on Monday, 11 December 2023.

Recommended action

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

- a **Note** the Fair Pay Agreements Act Repeal Bill has now been drafted.
Noted
- b s 9(2)(h) and s 9(2)(f)(iv)
Noted
- c **Note** the intention is for the Cabinet paper *Repeal of the Fair Pay Agreements legislation* to go straight to Cabinet for consideration on Monday, 11 December 2023.
Noted
- d **Agree** to lodge the Cabinet paper *Fair Pay Agreements Act Repeal Bill: Approval for Introduction* with Cabinet Office on Friday, 8 December 2023.
Agree / Disagree
- e **Note** your office has indicated that the FPA Repeal Bill will form part of a larger urgency motion (with multiple Bills), in which case the Leader of the House will take the urgency motion.
Noted
- f **Agree** to provide the legislative statement on the FPA Repeal Bill to the Leader of the House, Clerk, and the Leader, whip, or relevant spokesperson of each party by the end of the day on 11 December.
Agree / Disagree

- g **Note** that Cabinet Circular CO (20) 2 requires MBIE's Regulatory Impact Statement to be published, with a link to the publication required in the Bill.

Noted



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

07 / 12 / 23

Hon Brooke van Velden
Minister for Workplace Relations & Safety

..... / /

Background

1. The National and ACT parties' coalition agreement committed to repealing the Fair Pay Agreements (FPA) regime by Christmas.
2. On 4 December 2023, Cabinet agreed to repeal the Fair Pay Agreements Legislation and to instruct the Parliamentary Counsel Office (PCO) to draft a Bill to reflect that decision (see CAB-23-MIN-0470).
3. On 5 December, we provided you with a draft Cabinet paper and a first draft of the Fair Pay Agreements Act Repeal Bill (FPA Repeal Bill).

This briefing provides you a series of required documents

Cabinet paper

4. We made minor changes to the Cabinet paper at paragraph 11, as suggested by your office. The final Cabinet paper is attached at **Annex Two** which, subject to your approval, is ready for lodgement on 8 December 2023.

The final Bill

5. The final Bill is attached at **Annex Three**. The Ministry of Justice has reviewed the Bill for compliance with the *New Zealand Bill of Rights 1990*, and has advised the Attorney-General. As is normal practice, we have not seen that advice, but we are confident Justice would have alerted us if there were any issues. We expect that this advice will be forwarded to you by the Attorney-General, once the Attorney-General has considered it. Once your office is ready to lodge the Cabinet paper, we will notify PCO that it can lodge the final Bill with Cabinet Office.

Departmental Disclosure Statement

6. A Departmental Disclosure Statement is attached as **Annex Four**. A Departmental Disclosure Statement is required by Cabinet Circular CO (13) 3 for all government Bills (unless exempt) and must be attached to the Cabinet paper seeking approval to introduce the Bill.

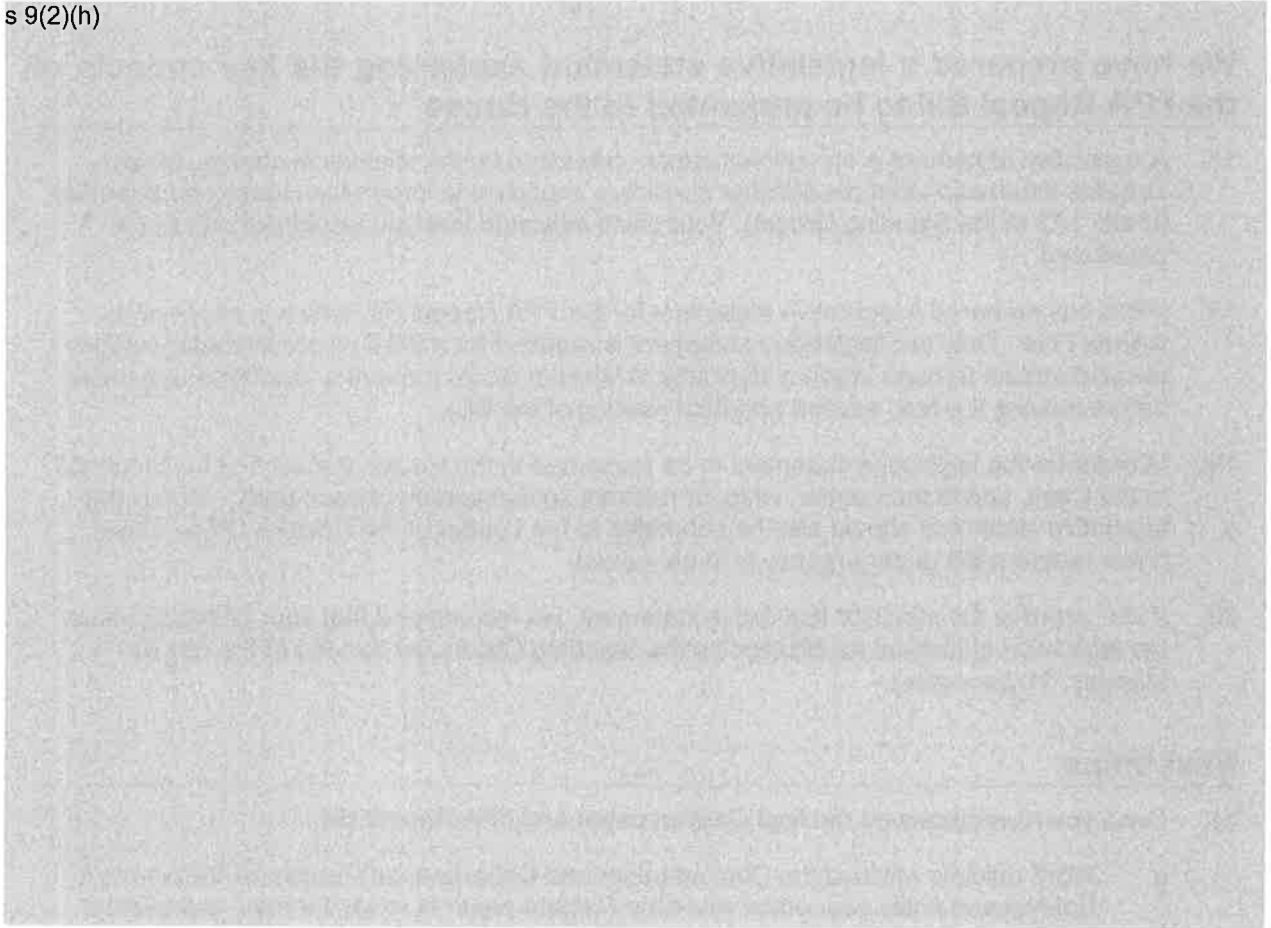
Talking points for Cabinet

7. We have also provided talking points at **Annex One** to support you at Cabinet on Monday, 11 December 2023.

It's standard to publish the Regulatory Impact Statement that accompanies a Bill

8. When the FPA Repeal Bill is introduced, Cabinet Circular CO (20) 2 requires that the accompanying Regulatory Impact Statements (RIS) are published. MBIE will publish the 2023 FPA RIS Coversheet on MBIE's website on introduction (the 2021 FPA RIS has already been published). s 9(2)(f)(iv)

s 9(2)(h)



There are two ways in which a Bill can be accorded urgency in the House

14. There are two types of urgency motions depending on whether urgency is to be accorded to one Bill or multiple Bills.
 - a. **Minister-led urgency motion.** If it is intended that only the FPA Repeal Bill is to be heard under urgency, then you, as the Minister responsible for the FPA Repeal Bill would move that the Bill be heard under urgency.
 - b. **Government motion for multiple Bills to be considered under urgency.** Where more than one Bill is to be heard under urgency, then the urgency motion is undertaken by the Leader of the House.
15. Your office has indicated that the intention is for FPA Repeal Bill to form part of a larger urgency motion (with multiple Bills), meaning the Leader of the House will take the urgency motion.
16. If this changes and only the FPA Repeal Bill was to be heard under urgency, then you, as the Minister in charge of the FPA Repeal Bill, would need to move the urgency motion after the completion of general business and prior to the Bill being introduced. When moving the motion, the Minister in charge must inform the House of the circumstances that warrant a claim for urgency.

We have prepared a legislative statement explaining the key aspects of the FPA Repeal Bill to be presented to the House

17. A legislative statement is an optional paper, presented by the Minister in charge, which includes information that the Minister considers important to inform the House about the Bill (under 272 of the Standing Orders). Your office indicated that you would like one to be developed.
18. MBIE has prepared a legislative statement for the FPA Repeal Bill, which is attached as **Annex Five**. Only one legislative statement is required for a Bill if all parliamentary stages are undertaken through urgency (typically, a Minister would present a legislative statement before moving the first, second and third reading of the Bill).
19. In order for the legislative statement to be presented to the House, it must first be circulated to the Clerk, and to the Leader, whip, or relevant spokesperson of each party. Ideally the legislative statement should also be submitted to the Leader of the House's Office a few hours before a Bill under urgency is to be moved.
20. If you approve the attached legislative statement, we recommend that your office circulates the legislative statement as directed by the Standing Orders, by the end of the day on Monday, 11 December.

Next steps

21. Once you have approved the final Cabinet paper and FPA Repeal Bill:
 - a. MBIE officials will load the Cabinet paper and Departmental Disclosure Statement in CabNet and notify your office when the Cabinet paper is ready for their approval for lodging.
 - b. MBIE officials will notify PCO that it can lodge the FPA Repeal Bill.
22. MBIE will send through a House pack with materials to support you during the parliamentary stages on Friday, 8 December. This pack will contain:
 - a. Talking points to use as the basis for your first, second and third reading speeches.
 - b. The legislative statement.
 - c. An explanation of each clause of the Bill and what it does.
 - d. Potential Q&As that may be asked in relation to the Bill.
 - e. The Cabinet papers, 2021 Regulatory Impact Statement (RIS), 2023 RIS Coversheet, Departmental Disclosure Statement.

Key stage	Timeframe
Lodge Cabinet paper to introduce Bill (late lodgement)	8 December
MBIE provides your House pack	8 December
Cabinet considers Cabinet paper to introduce Bill	11 December
Bill introduced and all parliamentary stages undertaken (approx.)	12-13 December
Royal assent (approx.)	14-15 December

Annexes

Annex One: Talking points for the Cabinet meeting on Monday, 11 December 2023

Annex Two: Cabinet Paper – Fair Pay Agreements Act Repeal Bill: Approval for Introduction (final version for lodgement)

Annex Three: Fair Pay Agreements Act Repeal Bill (final to be lodged by PCO)

Annex Four: Fair Pay Agreements Act Repeal Bill – Departmental Disclosure Statement

Annex Five: Fair Pay Agreements Act Repeal Bill – Legislative Statement

Annex One: Talking points for your Cabinet meeting on Monday, 11 December 2023

- We have committed to repealing the FPA legislation by Christmas 2023 as part of the Coalition agreement between the National Party and the ACT party.
- The Fair Pay Agreements Act Repeal Bill has now been drafted and is ready for introduction.
- I understand it has been reviewed for consistency with the *New Zealand Bill of Rights Act 1990* by the Ministry of Justice, and I have not been notified of any issues arising in that review.
- In order for the Bill to be passed before Christmas 2023, the Bill will be passed through all the parliamentary stages under urgency.

If you want to outline what the Bill does:

- The Bill will repeal the *Fair Pay Agreements Act 2022* and the *Fair Pay Agreements Regulations 2022*.
- It also reverses a number of consequential amendments made by the *Fair Pay Agreements Act 2022* to other Acts.
- Lastly, it reverses amendments made to the *Employment Court Regulations 2000* and the *Employment Relations Authority Regulations 2000*.
- 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 legislation is repealed, bargaining for these FPAs will cease.

**Annex Two: Cabinet Paper – Fair Pay Agreements Act Repeal Bill:
Approval for Introduction (final version for lodgement)**

Annex Three: Fair Pay Agreements Act Repeal Bill (final to be lodged by PCO)

Annex Four: Fair Pay Agreements Act Repeal Bill – Departmental Disclosure Statement

Annex Five: Fair Pay Agreements Act Repeal Bill –Legislative Statement

Out of Scope



From: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>

Sent: Thursday, 7 December 2023 12:52 PM

To: Zach Boyle <Zachary.Boyle@parliament.govt.nz>

Cc: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>; Hannah Adams <Hannah.Adams@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>; Katherine Macneill <Katherine.MacNeill@mbie.govt.nz>; Nic Blakeley <Nic.Blakeley@mbie.govt.nz>; Anita Ng <Anita.Ng@mbie.govt.nz>; Briefings <briefings@mbie.govt.nz>; Raymond Chen <Raymond.Chen@mbie.govt.nz>

Subject: Briefing 2324-1140 Final Cabinet Paper - Fair Pay Agreement Repeal Bill - Approval for Introduction IN-CONFIDENCE

Hi Zach,

Please find attached briefing **2324-1140 Final Cabinet Paper – Fair Pay Agreement Repeal Bill – Approval for Introduction** which includes Annex One, Talking Points for Cabinet on 11 December. Also attached are:

- Annex Two: Cabinet Paper – Fair Pay Agreements Act Repeal Bill: Approval for Introduction (final version for lodgement)
- Annex Three: Fair Pay Agreements Act Repeal Bill (final to be lodged by PCO)
- Annex Four: Fair Pay Agreements Act Repeal Bill – Departmental Disclosure Statement
- Annex Five: Fair Pay Agreements Act Repeal Bill – Legislative Statement

Let us know if you are happy to lodge, and we can upload the Cabinet paper and Departmental

Disclosure Statement either this afternoon or by 10 am tomorrow at the latest.

Note, PCO will do their final checks on the Bill, and they will lodge it separately when the office has approved for it to be lodged.

Thanks,

Stacey

Stacey Campbell ([she/her](#))

Senior Policy Advisor | Employment Relations Policy | Workplace Relations and Safety Policy Branch

Email - Īmera: Stacey.Campbell@mbie.govt.nz | **DDI – Waea Tōtika:** 901 4139

MINISTRY OF BUSINESS INNOVATION & EMPLOYMENT / HĪKINA WHAKATUTUKI

Level 6, 15 Stout Street, PO Box 1473, Wellington, New Zealand | www.mbie.govt.nz



BRIEFING

Repeal of the Fair Pay Agreements legislation

Date:	28 November 2023	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2324-0918

Action sought		
	Action sought	Deadline
Hon Brooke van Velden Minister for Workplace Relations and Safety	Provide comments on the draft Cabinet paper attached. Arrange for the Cabinet paper to go straight to Cabinet on 4 December. Indicate your preference in relation to grant funding for FPA bargaining sides.	30 November 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	s 9(2)(a)	✓
Hannah Adams	Principal Advisor, Employment Relations Policy	04 896 5262		

The following departments/agencies have been consulted
Treasury, Ministry of Justice, and Parliamentary Counsel Office.

- Minister's office to complete:**
- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Repeal of the Fair Pay Agreements legislation

Date:	28 November 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2324-0918

Purpose

This briefing seeks your decision on the initial steps to repeal the Fair Pay Agreements (FPA) legislation.

Executive summary

The legislative timeframes will need to be significantly shortened to achieve your timeframe

The National and ACT Parties' coalition agreement commits to repeal the Fair Pay Agreements (FPA) regime by Christmas 2023. We are ready to support you to achieve this. It will require the timeframes for each step to be significantly reduced from normal. In particular:

- The Cabinet paper seeking approval for the policy will need to be lodged this week for consideration by Cabinet on 4 December, omitting consideration by a Cabinet Committee. We have attached a draft Cabinet paper for your review.
- A very short timeframe will be available for Parliamentary Counsel Office (PCO) to draft the Bill (until 15 December). PCO advises that this timeframe is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December).
- The Ministry of Justice's Bill of Rights Act vet will need to be based on a near final draft of the Bill and they would only have 1-2 days, rather than the normal two weeks.
- The Cabinet paper seeking approval to introduce the Bill would need to be considered by Cabinet on 18 December, again omitting consideration by a Cabinet Committee.
- The Bill will need to be passed under urgency and receive Royal Assent in the week of 18 December.

There are operational implications of repealing the FPA legislation

The Ministry of Business, Innovation and Employment (MBIE) currently performs a range of FPA related functions required by the FPA Act, such as assessing and deciding on applications to initiate bargaining or be a bargaining party. Some of these functions involve statutory timeframes for decisions by the Chief Executive of MBIE. MBIE is legally required to continue performing these functions until any repeal takes effect and is funded to do so.

MBIE and the Employment Relations Authority (ERA) received funding in Budget 21 and Budget 22 to operationalise the FPA system. Due to delays in the legislative process and FPA bargaining, some FPA functions have not been needed to date, and this additional capacity has been used to address general demand in the employment system. Given the high demand for services across the employment system at present, decisions to remove or reduce FPA funding will have implications for service delivery. This is covered further in the Workplace Relations and Safety portfolio fiscal briefing (2324-0900 refers).

MBIE also received an additional allocation of grant funding to disburse to bargaining sides. This funding will continue to be provided to bargaining sides until the FPA system is repealed unless

Cabinet decides to stop providing it before then. s 9(2)(h) . If, however, you would prefer to stop providing this funding through new grants given the system is being repealed, you could seek a Cabinet decision on this, as part of the initial Cabinet decisions on repealing the FPA legislation. We seek a decision from you on this point.

Recommended action

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

- a **Note** Treasury indicated that MBIE would be granted a duplication exemption from Regulatory Impact Statement (RIS) requirements if MBIE provided the 2021 Fair Pay Agreement (FPA) RIS to accompany the Cabinet paper, together with a new 'coversheet' outlining any additional impacts of the repeal. *Noted*
- b **Note** MBIE has prepared the coversheet analysis to accompany the existing RIS and has received confirmation from the Treasury that we have met the requirements for the exemption. *Noted*
- c **Agree** to provide comments on the draft Cabinet paper attached in Annex Three by 29 November. *Agree / Disagree*
- d **Agree** to seek the permission of the Prime Minister's Office and Cabinet Office for the FPA repeal policy paper to be lodged this week and go straight to Cabinet on 4 December. *Agree / Disagree*
- e **Note** that drafting timeframes will be significantly truncated, but Parliamentary Counsel Office advises that passing a Bill before Christmas is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December). *Noted*
- f **Note** MBIE will continue to perform operational functions relating to FPAs until the repeal takes effect, where these are not discretionary under the *Fair Pay Agreements Act 2022*, and some involve statutory timeframes. *Noted*
- g **Note** that, some of the funding provided in Budget 21 and Budget 22 to operationalise the FPA system has created some additional capacity which is being used to address high demand for general employment services due to delays in FPA bargaining. *Noted*
- h **Note** MBIE received an allocation of grant funding to disburse to bargaining sides (\$59,375 per bargaining side, with a potential additional \$25,000 if membership of unions or employer associations on their side is low). *Noted*
- i **Indicate** whether you would prefer to:

Option 1: Continue to provide grant funding until the FPA legislation is repealed.	Option 1
	Or
Option 2: Seek Cabinet approval to stop accepting applications for grant funding while the FPA legislation is being repealed but continue to process existing applications.	Option 2

	Or
Option 3: Seek Cabinet approval to stop providing new grant funding while the FPA legislation is being repealed (this will mean existing applications on hand would not receive funding).	Option 3



Beth Goodwin
Manager, Employment Relations Policy
 Workplace Relations and Safety Policy, MBIE

28 / 11 / 2023

Hon Brooke van Velden
Minister for Workplace Relations and Safety

..... / /

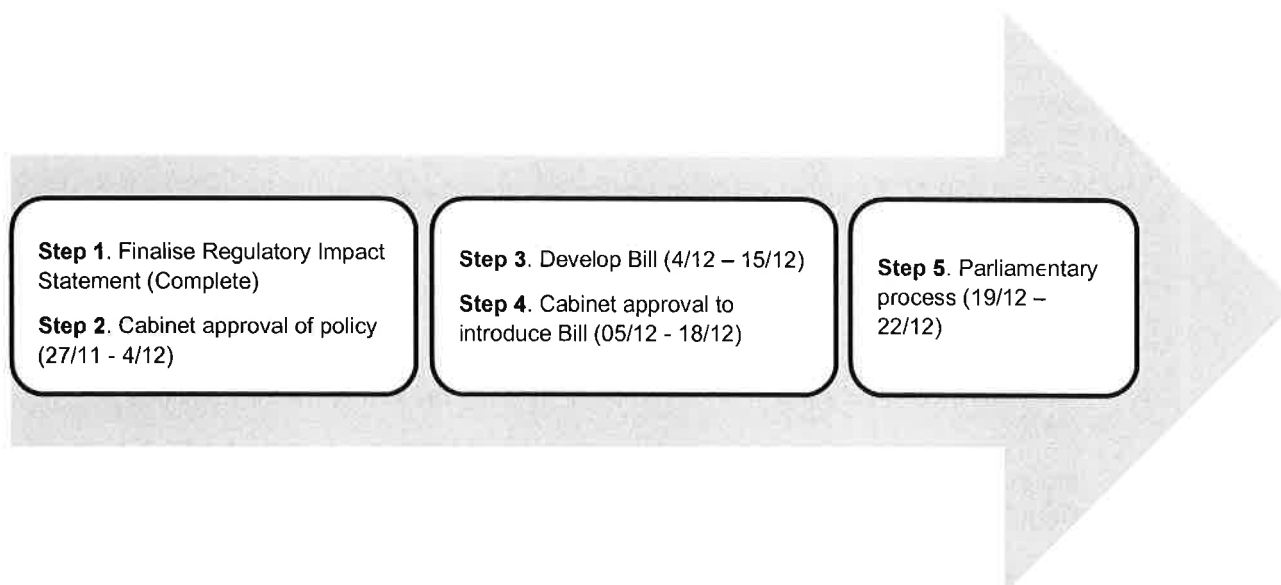
Background

1. In 2022, the government introduced legislation for a Fair Pay Agreements (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.
2. The National and ACT Parties' coalition agreement includes a commitment to repeal the FPA regime by Christmas. This will require the repeal of the:
 - a. *Fair Pay Agreements Act 2022*,
 - b. Fair Pay Agreements Regulations 2022,
 - c. consequential amendments made to other acts (eg the *Employment Relations Act 2000*),
 - d. amendments made to other regulations (eg the Employment Relations Authority Regulations 2000 and Employment Court Regulations 2000).
3. Repealing the FPA system also has implications for functions funded to administer and support the system, which sit within the Ministry of Business, Innovation and Employment (MBIE) and Employment Relations Authority (ERA), and the grant funding provided as part of the system.
4. This briefing includes advice on the process for repealing the FPA legislation by Christmas and seeks a decision on the grant funding available for bargaining sides. It also outlines some considerations in relation to the funding for FPA related functions (which will be covered in more detail in separate advice), the obligations that will continue to apply for stakeholders, and work programme discussions.

Repealing the FPA Act by Christmas will require shortening the timeframes for the legislative process

5. Repealing an Act, and associated regulations, requires the same steps as any Bill. The steps are to: develop a regulatory impact statement, seek Cabinet approval of the policy, draft the Bill, seek Cabinet approval to introduce the Bill, and for parliament to consider the Bill.
6. To repeal the FPA legislation by Christmas, it will be necessary to significantly condense or skip some of the steps involved in the legislative process. The steps outlined below assume the intended Bill covers a clear-cut policy to repeal the system, in a context where no FPAs have been finalised. We consider there is little chance that any FPAs would be finalised in this timeframe, given the current progress of initiated FPAs.
7. An indicative timeframe for each step is summarised in the diagram below, and then explained in the following sections. The intention is for some steps to occur simultaneously to reduce the overall timeframe.

Indicative timeframe for repealing the FPA legislation before Christmas



8. Annex One sets out the steps and indicative timeframes in greater depth and Annex Two includes a summary of the actions and decisions required to reduce the timeframes for each step.


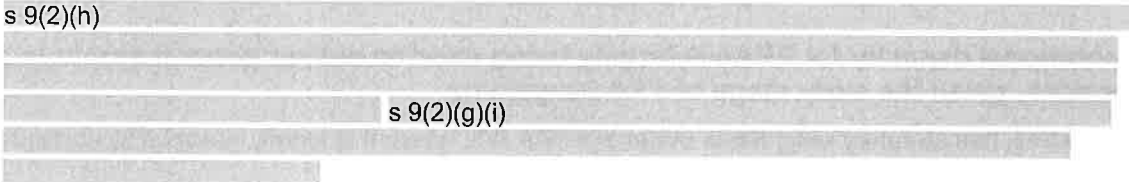

Step one: Regulatory Impact Statement

9. A Cabinet circular requires that, unless an exemption applies, any government regulatory proposals taken to Cabinet for approval that ultimately require creating, amending, or repealing Acts or secondary legislation must be accompanied by a RIS (which has been independently quality assessed and at least 'partially meets' the RIS quality requirements).
10. One of the grounds for granting an exemption is that "the relevant issues have already been adequately addressed by existing impact analysis". Treasury advised it would grant a duplication exemption if MBIE attaches the 2021 FPA RIS to the Cabinet paper, together with a supplementary 'coversheet' containing analysis of the impacts of repealing the FPA legislation. The granting of the exemption is based on the assumption that the policy proposal taken to Cabinet will be for a straightforward repeal of the entire FPA system.
11. MBIE have developed the supplementary coversheet and it has been through MBIE's quality assurance process. We have received confirmation from Treasury that we have, therefore, met the requirements for the exemption.

Step two: Cabinet approval of policy

12. We have prepared a draft Cabinet paper, which is attached at Annex Three (based on the existing Cabinet paper template).
13. We request you provide any comments on the draft Cabinet paper to us by 29 November. The Cabinet paper will need to be lodged on 30 November, which will allow no, or only minimal, time for consultation with other government agencies, Ministers, or coalition partners.
14. The Cabinet paper will need to be considered by Cabinet on 4 December, omitting any consideration by a Cabinet Committee. This will require the permission from the Prime Minister's Office and Cabinet Office – we recommend your office contact the Prime Minister's Office and Cabinet Office to arrange for this. MBIE's private secretary can assist with this.

Step three: Develop Bill

15. The Bill to repeal the FPA legislation is reasonably simple but will need to also cover the repeal of the associated regulations and the amendments made to other Acts and regulations when establishing the system (eg the *Employment Relations Act 2000*, the *Employment Relations Authority Regulations 2000* and the *Employment Court Regulations 2000*).
16. We have identified one technical change that was made to *Employment Court Regulations 2000* as part of the FPA related amendments that should be retained, as it fixed an error. This amendment made the figures for the fees for all *Employment Court* forms (not just the FPA related forms) GST-exclusive. We have included this as a recommendation in the draft Cabinet paper.
17. Parliamentary Counsel Office (PCO) does not normally begin drafting until a Cabinet decision directs them to do so and MBIE has provided drafting instructions. MBIE has drafting instructions ready, which we will be ready to share with PCO upon Cabinet policy approvals.
18. To achieve the intended repeal date, the timeframe for drafting the Bill will need to be significantly truncated, to approximately 1.5 weeks (4 to 15 December). PCO advises that this timeframe is possible, as long as Cabinet policy approvals are secured as soon as possible (ie on 4 December).
19. The truncated timeframe will require that no or only standard transitional provisions are inserted. s 9(2)(h)
s 9(2)(h)

20. s 9(2)(h)

s 9(2)(g)(i)

21. The Ministry of Justice completes a Bill of Rights Act (BoRA) vet of all Bills. The CabGuide requires a final version of the Bill to be provided to the Ministry of Justice at least two weeks in advance of the Cabinet Legislation Committee meeting considering the Bill. To achieve the intended timeframe, the BoRA vet will need to instead occur in one to two days (approximately 11 to 12 December) and be based on a near final draft of the Bill (so that it can occur in parallel with the Bill being finalised). This is likely to require the BoRA advice to be caveated. We have alerted the Ministry of Justice of the commitment in the coalition agreement and will keep your office updated.

Step four: Cabinet approval to introduce Bill

22. Once the Bill is drafted, the next step is for you to seek approval from Cabinet to introduce the Bill, on 18 December. This will require:
 - a. MBIE to draft the Cabinet paper while the Bill is being developed (5 to 8 December),
 - b. you to review the draft and provide any feedback (11 to 14 December),

- c. the Cabinet paper to be lodged on 15 December. This is a day later than is standard practice to allow PCO an extra day for drafting of the Bill. We recommend your office seek approval from Cabinet Office to seek a late lodgement in advance. MBIE's private secretary can assist with this.
 - d. the Cabinet paper to be considered by Cabinet on 18 December, omitting any consideration by a Cabinet Committee. The draft Cabinet paper attached includes a recommendation seeking Cabinet approval for this.
23. The timeframes above assume no consultation occurs on the paper or draft Bill with other agencies, Ministers or coalition partners. Please advise us if consultation is required.

Step five: Parliamentary process

24. To achieve the intended timeframe, the Bill would need to be considered under urgency and pass through all the parliamentary stages on 19 and 20 December (with no Select Committee). Cabinet would need to approve that the Bill be considered under urgency. We have included this in the attached draft Cabinet paper. Before Cabinet approval is sought, MBIE's private secretary can work with your office to liaise with the Leader of the House's office, as the latter generally arranges the schedule of the House (including any motions for urgency).
25. Once the Bill has had its third reading, the Governor-General needs to sign it (Royal assent). This would need to occur within one or two days after the third reading. MBIE will work with the Clerk to expedite this, noting that it depends on the Governor-General's availability. The Act would then come into force the day after Royal Assent.

Repealing the FPA legislation will have operational implications

26. Funding was allocated in Budget 21 and Budget 22 to support the FPA system. There are two broad categories for this funding:
- a. Funding for MBIE and the ERA to operationalise the FPA system.
 - b. Grant funding for bargaining sides, disbursed via MBIE on application.

Operational capacity for FPAs is largely being used to deliver general employment services, given the early stage of FPA bargaining

27. MBIE has statutory obligations under the FPA Act, which it is legally required to continue performing until the legislation is repealed.
28. MBIE and the ERA received funding in Budget 21 and Budget 22 to deliver FPA related operational functions. For 23/24, this funding is approximately \$16.209 million in operating expenditure. This covers the following:
- a. providing information and education about the FPA system,
 - b. providing bargaining support services,
 - c. decision-making by the Chief Executive of MBIE (CE MBIE), who is required to assess and decide on applications to initiate bargaining for an FPA or be a bargaining party,
 - d. providing dispute resolution services (eg mediation and early resolution),
 - e. making determinations and monitoring and enforcing compliance with an FPA through the Labour Inspectorate,
 - f. the ERA making FPA-related determinations, including to resolve disputes.

29. Budget 21 and 22 funding provided for the significant expansion in MBIE and ERA capacity required to support the operation of the FPA system. This funding was deliberately phased to start ahead of the commencement of the system, ensuring that new operational frontline workers were recruited, trained and effective in their roles in time for the FPA system coming into force on 1 December 2022.
30. Due to delays in the legislative process and FPA bargaining, only the information and education, bargaining support service, and CE MBIE decision-making functions have been required for FPAs to date. This means that the dispute resolution, Labour Inspectorate and ERA capacity funded by FPAs is continuing to be used, as planned, to address high demand in the general employment system while awaiting FPA work. With the first FPA bargaining commencing on 20 September 2023, this was expected to escalate significantly from Quarter 2 2023/24.
31. These core employment services are under considerable demand pressures. This is largely due to high demand in the system for services to address migrant exploitation, support the Recognised Seasonal Employer scheme, and resolve employment disputes (through both mediation and the ERA). More advice about this is in the Workplace Relations and Safety portfolio fiscal briefing (2324-0900 refers)

You could seek Cabinet approval to stop providing grant funding to bargaining sides while the legislation is being repealed

32. To support capability and capacity during bargaining for both FPAs and occupational contracts under the *Screen Industry Workers Act 2022* (SIWA), Cabinet decided that:
 - a. the peak bodies (the New Zealand Council of Trade Unions (NZCTU) and BusinessNZ) would be given \$250,000 each per annum, for three years, with specified funding conditions to build capacity and capability to support the FPA system [CAB-21-MIN-0126 and DEV-21-MIN-0173],
 - b. a one-off contribution of \$50,000 would be available to each FPA and SIWA bargaining side (for FPAs, this funding is capped at 12 bargaining sides per year) [CAB-21-MIN-0126],
 - c. an additional contribution of up to \$25,000 to each FPA and SIWA bargaining side if less than 20 per cent of those in coverage on their side is a member of a union or industry group (as relevant) (for FPAs, capped at six bargaining sides per year) [CAB-21-MIN-0126].
33. NZCTU has received the three payments of \$250,000 for the work it has done and is undertaking (including work in respect to SIWA). BusinessNZ did not accept the funding, and the funding was partially redistributed to the Screen Production and Development Association for SIWA purposes, with the remainder being used to increase the one-off contribution available for each FPA and SIWA bargaining side to \$59,375 in 23/24 only.
34. MBIE is currently receiving and approving applications for the grant funding for FPA bargaining sides. As at 27 November 2023, six FPA bargaining sides have applied for and received the one-off contribution (\$356,250 disbursed) and six bargaining sides have applied for and received the additional contribution of \$25,000 (\$150,000 disbursed). In total, \$506,250 has been disbursed, meaning an additional \$356,250¹ could potentially be provided in the current financial year (if applied for). MBIE do not currently have any further applications being processed.
35. You have a choice about whether MBIE should:

¹ Up to six bargaining sides could apply for and receive \$59,375 each. No further bargaining side could receive the additional contribution of \$25,000 (as this was capped at six bargaining side per year).

- continue distributing the funding until the FPA Act is repealed, or
- stop accepting applications (but still process any funding applications already received), or
- stop funding any applications now (including not funding any applications already received).

36. s 9(2)(h)

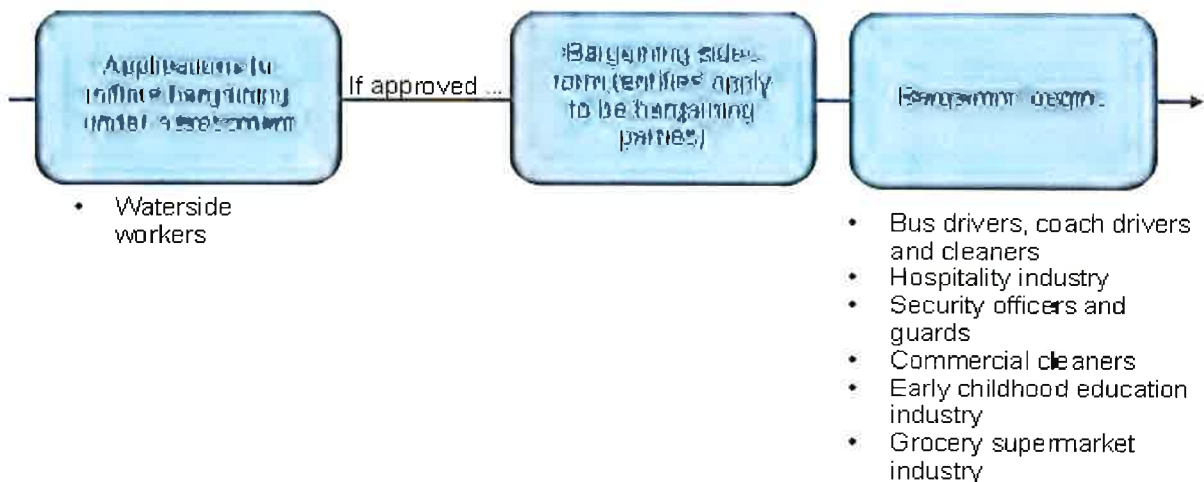
If you want to stop funding bargaining sides before the repeal takes effect, you can do this via a Cabinet decision. This could be sought as part of the initial Cabinet decisions regarding the repeal of the FPA legislation. The recommendations at the front of this briefing seek your direction on this point, and the attached Cabinet paper includes tentative text which we can remove if you want to continue the status quo.

37. s 9(2)(f)(iv)

Stakeholders involved in FPAs will need to continue to meet their legislated obligations until the FPA Act is repealed

38. As the FPA Act only came into force on 1 December 2022, the system is still in its early stages. As at 27 November 2023:
- a. six FPAs have been approved for initiation and the bargaining sides have formed, and
 - b. one initiation application is being assessed by MBIE.

Initial stages of the FPA process



39. The FPA that is the most progressed is the 'Bus drivers, coach drivers and cleaners' FPA for which bargaining sides formed on 28 June 2023. Bargaining between sides began in September 2023. Bargaining sides have formed for the other five initiated FPAs but we understand that the sides have not yet begun to bargain.

40. As your intention is to repeal the system by Christmas, we do not believe that any of the initiated FPAs will be finalised before the system is repealed, particularly due to the timeframes required to ratify an FPA.

41. Bargaining sides, bargaining parties and covered employers for initiated FPAs must continue to meet their obligations under the FPA Act until it is repealed. In particular:
- a. employers will be required to meet the relevant notification requirements, and
 - b. bargaining parties and bargaining sides will be required to meet their good faith obligations.
42. As part of implementing the repeal of the FPA Act, MBIE will keep bargaining parties (or applicants) updated about the Government's decisions, timing of the repeal, and what this means for their current obligations.

s 9(2)(f)(iv)

43. The FPA system was developed to address issues identified in the labour market. In the RIS developed to consider the implementation of the FPA system, MBIE identified the following issues:
- a. In some sectors/occupations and in some circumstances, the current collective bargaining framework is not providing adequate mechanisms to mitigate the inherent imbalance of bargaining power in the employment context. There is evidence that wages have not kept up with productivity improvements in recent decades. While there are many potential factors, an imbalance of bargaining power is likely to be a contributor.
 - b. In some labour-intensive sectors of the economy, employers may be able to compete by holding down or reducing terms and conditions offered to workers, often described as a 'race to the bottom'. National minimum standards provide some protections for workers, but the suitability of minimum terms and conditions will differ depending on the workforce.
44. The FPA Working Group, which included a BusinessNZ representative, concluded that a mature 21st century labour market in New Zealand will require stronger dialogue between employers and workers. Repealing the FPA system will mean there will be no intervention in the employment relations and employment standards system focused on improving the dialogue between employers and workers to address the identified issues.

45. s 9(2)(f)(iv)

46. s 9(2)(f)(iv)

Next steps

47. We will update the draft Cabinet paper based on your decisions in this briefing and any feedback you provide, in preparation for lodging it later this week.

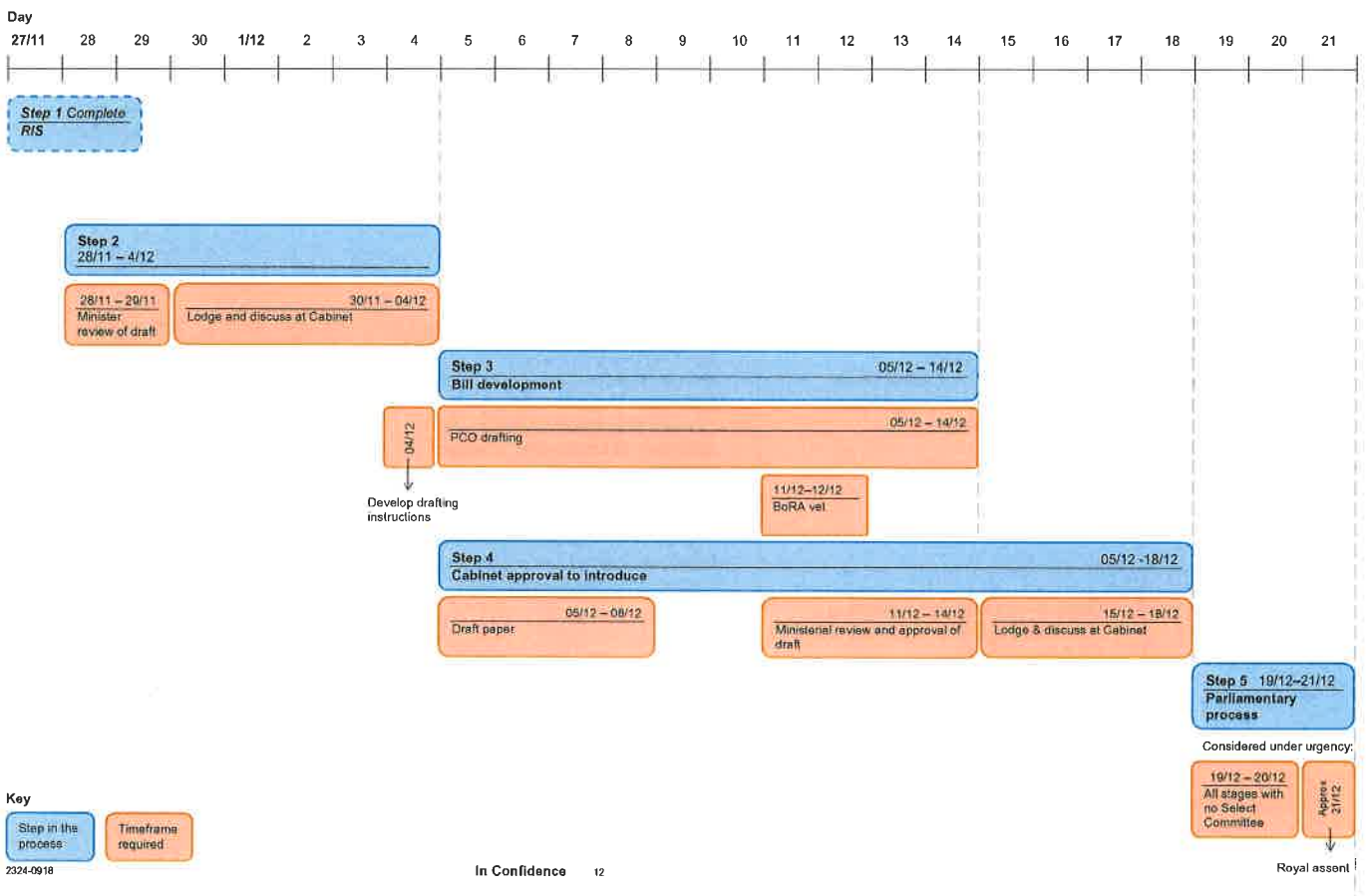
Annexes

Annex One: Indicative timeframes for repealing the FPA legislation before Christmas

Annex Two: Actions and decisions required to shorten the timeframe for repealing the FPA legislation

Annex Three: Draft Cabinet paper "Repeal of the Fair Pay Agreements legislation"

Annex One: Indicative timeframes for repealing the FPA legislation before Christmas



Annex Two: Actions and decisions required to shorten the timeframe for repealing the FPA legislation

Step	Options for shortening the timeframe	Action or decision required	
		Minister / Minister's Office	MBIE
1: Regulatory Impact Statement	<ul style="list-style-type: none"> Treasury advised it would grant a duplication exemption if MBIE attaches the 2021 FPA RIS to the Cabinet paper, together with a supplementary 'coversheet' containing analysis of the impacts of repealing the FPA legislation. MBIE has prepared the coversheet analysis to accompany the 2021 FPA RIS and FPA repeal Cabinet paper. 		<ul style="list-style-type: none"> No further action required, as Treasury has confirmed that the requirements for the exemption have been met.
2: Cabinet approval of the policy to repeal the FPA system	<ul style="list-style-type: none"> Skip agency, Ministerial, and coalition partner consultation. Take the paper to Cabinet on 4 December without first going to Cabinet Committee. 	<ul style="list-style-type: none"> Work with the Prime Minister's Office and Cabinet Office to add the FPA repeal paper to the agenda for the 4 December Cabinet meeting. Confirm that no consultation with agencies, Ministers and coalition partners is required. Provide feedback on the draft Cabinet paper by 29 November. Approve final Cabinet paper (once MBIE has loaded it into CabNet) for lodging on 30 November. 	<ul style="list-style-type: none"> Incorporate Minister's feedback and decisions in the draft Cabinet paper. MBIE upload final Cabinet paper in CabNet on 30 November.
3: Develop the Bill	<ul style="list-style-type: none"> Drafting instructions prepared in advance and finalised the day Cabinet confirms the policy. Prioritise drafting and BoRA vet (note this would require a significantly reduced timeframe from what PCO and Ministry of Justice indicated is required). BoRA vet based on a near final draft. 		<ul style="list-style-type: none"> Prepare drafting instructions in advance. Support PCO via quick turnaround of reviews of draft Bills etc. Arrange with Ministry of Justice for the timeframe for the BoRA vet to be significantly reduced Provide draft Bills to the Ministry of Justice so that the BoRA vet can

			occur at the same time as the Bill is being drafted.
4: Cabinet approval to introduce the Bill	<ul style="list-style-type: none"> • Develop Cabinet paper while Bill is being drafted. • Skip agency, Ministerial, and coalition partner consultation (or hold a very short consultation). • Take the item or paper straight to Cabinet on 18 December without first going to Cabinet Committee. 	<ul style="list-style-type: none"> • Work with the Prime Minister's Office and Cabinet Office to add the FPA repeal paper to the agenda for the 18 December Cabinet meeting. • Confirm that no consultation with agencies, Ministers and coalition partners is required (or a very short consultation is required), • Provide feedback on a draft Cabinet paper while the Bill is being drafted (by 14 December). • Seek approval for a late lodgement from the Cabinet Office in advance. • Approve final Cabinet paper (once MBIE has loaded it into CabNet) for lodging on 15 December. 	<ul style="list-style-type: none"> • Develop the draft Cabinet paper and provide to the Minister to review. • Incorporate Minister's feedback in the draft Cabinet paper and finalise for lodging. • MBIE upload final Cabinet paper in CabNet on 15 December (this timeframe requires a late lodgement of the Cabinet paper).
5: Parliamentary process	<ul style="list-style-type: none"> • Bill considered under urgency. • Royal assent arranged to occur one or two days after third reading. 	<ul style="list-style-type: none"> • Liaise with the Leader of the House's office to confirm the Bill can be progressed under urgency, and seek Cabinet approval for his (as part of the Cabinet paper seeking approval to introduce). 	<ul style="list-style-type: none"> • Coordinate the timing of Royal assent with the Clerk.

Annex Three: Draft Cabinet paper “Repeal of Fair Pay Agreements legislation”

Vidushi Challapali

From: Beth Goodwin
Sent: Tuesday, 28 November 2023 4:39 pm
To: Zach Boyle (Parliament)
Cc: Anna Clark; Mary Direen; Ally Koehler; Charlotte De Feijter; Ben Loughrey-Webb; Hannah Adams; Stacey Campbell
Subject: Talking points for Cabinet tomorrow [IN-CONFIDENCE]
Attachments: Talking points for Cabinet meeting on 100-day commitments.docx

Kia ora Zach

Attached are suggested talking points for Hon van Velden for Cabinet tomorrow, in case she'd like to outline her plan to Cabinet on FPAs **out of scope**

out of scope

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
beth.goodwin@mbie.govt.nz | **s 9(2)(a)**
Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

Suggested talking points for 29 November Cabinet meeting on 100-day commitments

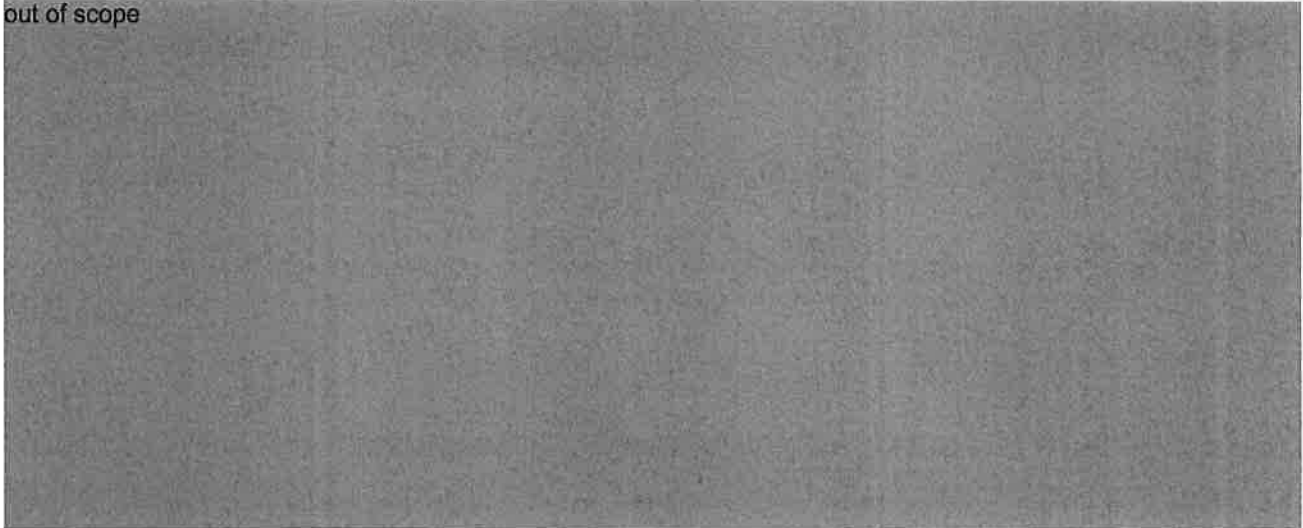
Minister for Workplace Relations and Safety

Note we haven't yet been advised about Ministerial and coalition party consultation requirements, but the timeframes below don't allow much/any time for consultation. So if it's appropriate in the context, you might want to seek an informal signal of support at Cabinet for your proposed approach.

Repeal of FPA Legislation

- 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.
- I intend to bring a paper seeking approval of this policy to Cabinet on **Monday (4 December)**.
- PCO have confirmed that they can draft the Bill in time for me to seek approval to introduce the Bill at the Cabinet meeting on **18 December**.
- The Bill could then go through the House under urgency later that week.

out of scope



Vidushi Challapali

From: Beth Goodwin
Sent: Tuesday, 28 November 2023 5:14 pm
To: Zach Boyle (Parliament)
Subject: Availability [IN-CONFIDENCE]

Kia ora Zach

For a session on FPAs and **out of scope** Ally, Charlotte and I can do anytime from 12pm tomorrow.

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
beth.goodwin@mbie.govt.nz | **s 9(2)(a)**
Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

Vidushi Challapali

From: Stacey Campbell
Sent: Wednesday, 29 November 2023 12:10 pm
To: Zach Boyle (Parliament)
Cc: Beth Goodwin; Hannah Adams
Subject: RE: Question on FPAs CAB paper [IN-CONFIDENCE]
Attachments: Annex One - Draft Cabinet paper Repeal of Fair Pay Agreements legislation (marked up version for review).docx

Hi Zach,

As discussed, attached is the revised track Cabinet paper incorporating your comments in paragraph 4 (the executive summary) and in paragraph 13.

Note, we have also made some changes in response to feedback that we had from Cabinet Office on the recommendations and paragraph 21 of the paper. This will be explained in the cover briefing that will come across later this afternoon once we have confirmed all changes for the Cabinet paper.

Have you thought about whether you may need a late lodgement? Or are we anticipating lodging by 10 tomorrow?

Thanks,
Stacey

From: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Sent: Wednesday, 29 November 2023 10:11 am
To: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>
Subject: FW: Question on FPAs CAB paper

Hi Beth,

In addition to the below question, a couple other requests/proposed amendments on the CAB paper below:

- Can we add a para up front in the paper – preferably in the exec summary – that explains why it's appropriate that the Bill is being passed under urgency? Something in the vein of the final sentence of para 11, while also emphasising that transitional arrangements have the potential to become more complicated and costly if we wait and undergo the full parliamentary process
- Not for the CAB paper, but separately can we provide a list of the bargaining sides that have been provided the grant funding thus far?

Thanks
Zach

From: Zach Boyle
Sent: Wednesday, 29 November 2023 8:21 AM
To: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>
Subject: Question on FPAs CAB paper

Hi Beth,

One question from the Minister overnight on the FPAs CAB paper – s 9(2)(h)

Be great to have a response by noon, if possible, thanks!

Zach Boyle | Private Secretary (Workplace Relations and Safety)

s 9(2)(a)

Vidushi Challapali

From: Anna Clark
Sent: Wednesday, 29 November 2023 1:07 pm
To: Ben McBride [DPMC]; Beth Goodwin
Subject: RE: Questions from LOH on immediate legislation [IN-CONFIDENCE]

We didn't know we were up for the 11th – had thought PCO still working towards 18th. But we're all good for the 11th.

From: Ben McBride [DPMC] <Ben.McBride@dpmc.govt.nz>
Sent: 29 November 2023 12:31
To: Anna Clark <Anna.Clark2@mbie.govt.nz>; Beth Goodwin <Beth.Goodwin@mbie.govt.nz>
Subject: FW: Questions from LOH on immediate legislation [IN-CONFIDENCE]

Hi both

Start from the bottom email, you'll see PCO are in agreement with you. I'll tell my colleague that you're still fine with the 11 not 18th?

From: Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>
Sent: Wednesday, 29 November 2023 12:15 pm
To: Ben McBride [DPMC] <Ben.McBride@dpmc.govt.nz>; Ruth Fairhall [DPMC] <Ruth.Fairhall@dpmc.govt.nz>
Subject: Fwd: Questions from LOH on immediate legislation

On my way back to the office, would be good to discuss

From: Richard Wallace <Richard.Wallace@pco.govt.nz>
Sent: Wednesday, November 29, 2023 11:40:43 AM
To: Sam Moffett [DPMC] <Sam.Moffett@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>
Subject: RE: Questions from LOH on immediate legislation

Hi Sam

Just quickly in response to your questions below.

Fair Pay Agreements Repeal

If CAB policy decisions are made on 4 December, then from a PCO perspective we can have the Bill ready for CAB on 11 December. We don't see any barriers to that. Maybe the department is saying that they can't do it in that time period? But, it's hard to see why. We can definitely do it from a PCO perspective.

s 9(2)(g)(i)

On these 2 Bills, we haven't heard anything about them. And, as with the other legislation, the key to this happening would be to get CAB policy decisions immediately.

Ngā mihi

Richard



Richard Wallace [He/Him](#) | Deputy Chief Parliamentary Counsel (Drafting) | Tumuaki Tuarua

Parliamentary Counsel Office | 2 The Terrace | PO Box 18 070 | Wellington 6160

s 9(2)(a) E Richard.Wallace@pco.govt.nz [Turning Policy Into Law](#) is PCO's interactive, step-by-step, guide on making legislation www.legislation.govt.nz | www.pco.govt.nz | [PCO LinkedIn](#) }

From: Sam Moffett [DPMC] <Sam.Moffett@dpmc.govt.nz>

Sent: Wednesday, November 29, 2023 10:51 AM

To: Richard Wallace <Richard.Wallace@pco.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>

Subject: Questions from LOH on immediate legislation

CAUTION: This email originated from outside the PCO. Do not click links or open attachments unless you recognise the sender and know the content is safe.

[IN-CONFIDENCE]

Hi Richard and Jess,

Richard, thanks for your email on the advice, much appreciated and will address your feedback asap – Jess, I thought you might also be able to shed light on the below, so any info from you would also be valuable.

I just had a short catchup with Louis in LOH office, couple of items from that:

s 9(2)(g)(i)

Thanks for any insight you can offer on the above – wanting to get this lined up asap as LOH is planning to use some of this info in his House update to CAB at 1, so want to make sure everything is accurate/can be debunked.

Cheers,

Sam



Sam Moffett (he/him)
Legislation Coordinator
Cabinet Office, Executive Wing,
Parliament Buildings, Wellington 6011, New Zealand

DDI: +64-4-912-0530
Email: Sam.Moffett@dpmc.govt.nz

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Vidushi Challapali

From: Beth Goodwin
Sent: Wednesday, 29 November 2023 3:35 pm
To: Zach Boyle (Parliament)
Cc: Charlotte De Feijter
Subject: RE: New Cabinet Office Notice: Cabinet and Cabinet committee meetings for December 2023 [IN-CONFIDENCE]
Attachments: CO Notice (23) 3 - Cabinet and Cabinet committee meetings for December 2023.pdf

Hey Zach,

I see they have put a couple of Committees in place for Dec – we're assuming we don't need to factor these in for FPAs and **out of** Cab papers, unless you tell us otherwise.

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
beth.goodwin@mbie.govt.nz | **s 9(2)(a)**
Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

From: CabNet CabNet@mbie.govt.nz
Sent: Wednesday, 29 November 2023 1:39 pm
To: *CABNET Users *CabinetUsers@mbie.govt.nz; Bill Busfield Bill.Busfield@mbie.govt.nz; Maria Bialostocki <Maria.Bialostocki2@mbie.govt.nz>
Subject: FW: New Cabinet Office Notice: Cabinet and Cabinet committee meetings for December 2023 [IN-CONFIDENCE]

Please find attached a new Cabinet Office Notice: **Cabinet and Cabinet committee meetings for December 2023**.

This notice sets out the Cabinet and Cabinet committee meeting arrangements for December 2023.

This is for internal use only. Please share this with staff in your Minister's office by email and/or post on your Pūkete site; or in your agency by email and/or post on your intranet.

Ngā mihi,

The Cabinet Office



The Cabinet Office | Te Tari o Te Kōmiti Matua
Cabinet Office, Executive Wing
Parliament Buildings, Wellington 6011, New Zealand

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Vidushi Challapali

From: Stacey Campbell
Sent: Thursday, 30 November 2023 9:20 am
To: Zach Boyle; Beth Goodwin; Hannah Adams
Subject: RE: Final version for lodgement FPA Cabinet paper [IN-CONFIDENCE]

Hey Zach,

The paper and attachments have been loaded now! Whoop 🥳

Thanks,

Stacey

From: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Sent: Thursday, 30 November 2023 9:03 am
To: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>; Hannah Adams <Hannah.Adams@mbie.govt.nz>; Stacey Campbell <Stacey.Campbell@mbie.govt.nz>
Subject: Final version for lodgement FPA Cabinet paper

Hi team – see attached the final version of the Fair Pay Agreements Cabinet paper for lodgement. The main changes from the version you sent last night are:

- Wording change in second sentence of para 4
- Wording change first sentence para 9
- Two new sentences added to para 11
- New para 25
- Para 39 edited to reflect meetings yesterday
- Rec 9 wording change

I think that's it! Please let me know once uploaded – happy to chat 😊

Thanks
Zach

Vidushi Challapali

From: Lynne Bowling [DPMC] <Lynne.Bowling@dpmc.govt.nz>
Sent: Thursday, 30 November 2023 10:29 am
To: Zach Boyle
Subject: RE: Attachment for the Repeal of the Fair Pay Agreements Legislation paper

That sounds great – thank you 😊

From: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Sent: Thursday, 30 November 2023 10:26 am
To: Lynne Bowling [DPMC] <Lynne.Bowling@dpmc.govt.nz>
Subject: Re: Attachment for the Repeal of the Fair Pay Agreements Legislation paper

Thanks Lynne - will have them delivered to you early afternoon today if that's okay?

Thanks
Zach

Get [Outlook for iOS](#)

From: Lynne Bowling [DPMC] <Lynne.Bowling@dpmc.govt.nz>
Sent: Thursday, November 30, 2023 10:24:00 AM
To: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Subject: Attachment for the Repeal of the Fair Pay Agreements Legislation paper

[IN-CONFIDENCE]

Kia ora Zach

Could you please provide attachments for the Repeal of the Fair Pay Agreements paper, as they are over 35 pages.

If you can arrange for 30 copies to be delivered to Registry on Level 10, Beehive as soon as possible that would be great.

Tēnā rawa atu koe.

Ngā mihi



Lynne Bowling
Business Support Administrator
Te Tari o te Pirimia me te Kōmiti Matua | DPMC | Cabinet Office
The Cabinet Office, Executive Wing,
Parliament Buildings, Wellington 6011, New Zealand

Email: Lynne.Bowling@dpmc.govt.nz
I work on Monday, Thursday and Friday.

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Vidushi Challapali

From: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Sent: Monday, 4 December 2023 4:49 pm
To: Beth Goodwin
Cc: Stacey Campbell; Hannah Adams; Charlotte De Feijter
Subject: RE: Procedural decisions needed on FPA repeal Bill [IN-CONFIDENCE]

Follow Up Flag: Follow up
Flag Status: Completed

Hi Beth

Preferred approach highlighted in green below. Also understand that the current scheduled date for FPAs going through the House is Wednesday evening (it's second on the Order paper after the RBNZ) and out of scope

Thanks
Zach

From: Zach Boyle
Sent: Monday, 4 December 2023 2:45 PM
To: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>
Cc: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>; Hannah Adams <Hannah.Adams@mbie.govt.nz>
Subject: RE: Procedural decisions needed on FPA repeal Bill [IN-CONFIDENCE]

Thanks Beth – yes to drafting a legislative statement, others we're awaiting clarity from LoH. Will get back to you as soon as we hear

Zach

From: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>
Sent: Monday, 4 December 2023 2:14 PM
To: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Cc: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>; Hannah Adams <Hannah.Adams@mbie.govt.nz>
Subject: Procedural decisions needed on FPA repeal Bill [IN-CONFIDENCE]

Hi Zach

The info we need about FPA repeal process from the office please:

1. Is the intention to introduce on Monday 11th (same day as Cabinet decision) or Tuesday 12th (the day after)?

- Because: the Cabinet paper usually signals when the Minister intends to introduce

2. Would the Minister like to table a legislative statement, or not?

- For introduction, a legislative statement is an optional paper, presented by the Minister in charge of a bill, which includes information that the Minister considers important to inform the House about the bill. A Minister may present a legislative statement in the House immediately before moving the first reading of the bill. Presenting a legislative statement for each reading of the bill is considered to be good practice - it enables other parties to understand the Bill in more detail to encourage better debate on the Bill.

- Presenting such a statement enables the Minister to make a more wide-ranging speech in the debate, on her broad policy intent. If there is no legislative statement, the Minister's speech would need to cover the technical details of the Bill.
- There is less need for one in relation to this Bill than most, as there isn't a lot of technical detail.
- However, it could explain some technicalities including that not only the FPA Act needs to be repealed, but also the consequential amendments to other Acts which are needed, and the regs. If PCO drafts in a sunset clause (ie, essentially the repeal legislation would expire once it has done its job of repealing the FPA Act) this would also be explained in the legislative statement.
- We need to know whether to draft one.

Also, to put on your radar, we suggest your office check with the Leader of the House's office about which type of urgency motion is intended to be used.

- The first type is the Minister raising a motion in relation to the Bill itself (i.e. the Minister stands up and says "I move for all stages of the FPA Repeal Bill to be heard under urgency" or similar).
- The other is a govt. motion to extend urgency to a number of Bills. If it's this, then the Minister to raise this motion would be the Leader of the House.

BETH GOODWIN

Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment

beth.goodwin@mbie.govt.nz | § 9(2)(a)

Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

Vidushi Challapali

From: Brooke van Velden
Sent: Monday, 4 December 2023 7:43 pm
To: Ally Koehler
Cc: Jenesa Jeram; Simon Clarke
Subject: Re: FOR REVIEW/APPROVAL: FPAs reactive media statement

Hi Ally, I am happy with this to go out thank you

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From: Ally Koehler <Ally.Koehler@parliament.govt.nz>
Sent: Monday, December 4, 2023 7:02:48 PM
To: Brooke van Velden <Brooke.vanVelden@parliament.govt.nz>
Cc: Jenesa Jeram <Jenesa.Jeram@parliament.govt.nz>; Simon Clarke <Simon.Clarke@parliament.govt.nz>
Subject: FOR REVIEW/APPROVAL: FPAs reactive media statement

Dear Minister,

Please see below reactive statement drafted around Fair Pay Agreements for your review/approval.

Context: NewsHub ran a piece this evening on the repeal of FPAs this included statements around 6 FPAs being approved to date (6 have been initiated, none have been finalised) and that the Minister consulted with Business New Zealand but not the CTUs. We will be reminding any enquiring journalists that you did meet with both CTU and Business New Zealand last week. We have had a request for a statement from Thomas Coughlan and expect there may be more interest. Will look forward to hearing from you.

For attribution to Hon Minister Brooke van Velden Minister for Workplace Relations and Safety.

“Getting rid of Fair Pay Agreements will bring about real change for New Zealand businesses.

“These agreements were a blunt tool that could be initiated by a union and a small number of employees, yet they applied to every employee and every employer within coverage.

“Employers would choose to hire fewer people or reduce hours of work due to higher costs associated with the terms and conditions within a Fair Pay Agreement. That means people seeking work miss out on job opportunities.

“No Fair Pay Agreements have been finalised to date. Repealing the legislation will have no impact on the current employment terms for workers.

“To increase the wages of workers and ensure lower prices for consumers, there needs to be improved productivity and an environment where business can operate competitively.

“The Government is moving quickly to remove this legislation before any fair pay agreements are finalised and the negative impacts are felt by the labour market.”

ENDS

Ally Koehler (she/her) | Press Secretary (Transitional)
Office of Hon. Brooke van Velden

Minister for Internal Affairs | Minister for Workplace Relations and Safety
s 9(2)(a) | Email ally.koehler@parliament.govt.nz

Vidushi Challapali

From: Claudia Toxopeus <Claudia.Toxopeus@tvnz.co.nz>
Sent: Monday, 4 December 2023 8:11 pm
To: Ally Koehler
Subject: Re: TVNZ Breakfast request - Fair Pay

Thank you Ally!

From: Ally Koehler <Ally.Koehler@parliament.govt.nz>
Sent: Monday, 4 December 2023 7:52 pm
To: Claudia Toxopeus <Claudia.Toxopeus@tvnz.co.nz>
Subject: RE: TVNZ Breakfast request - Fair Pay

Hi Claudia,

Please see a statement from Minister van Velden below. As background, the Office can also confirm that the Minister met with both the Council of Trade Unions and Business New Zealand last week.

For attribution to Hon Minister Brooke van Velden Minister for Workplace Relations and Safety:

“Getting rid of Fair Pay Agreements will bring about real change for New Zealand businesses.

“These agreements were a blunt tool that could be initiated by a union and a small number of employees, yet they applied to every employee and every employer within coverage.

“Employers would choose to hire fewer people or reduce hours of work due to higher costs associated with the terms and conditions within a Fair Pay Agreement. That means people seeking work miss out on job opportunities.

“No Fair Pay Agreements have been finalised to date. Repealing the legislation will have no impact on the current employment terms for workers.

“To increase the wages of workers and ensure lower prices for consumers, there needs to be improved productivity and an environment where business can operate competitively.

“The Government is moving quickly to remove this legislation before any fair pay agreements are finalised and the negative impacts are felt by the labour market.”

ENDS

Ally Koehler (she/her) | Press Secretary (Transitional)

Office of Hon. Brooke van Velden

Minister for Internal Affairs | Minister for Workplace Relations and Safety

s.9(2)(a) Email ally.koehler@parliament.govt.nz

From: Claudia Toxopeus <Claudia.Toxopeus@tvnz.co.nz>
Sent: Monday, 4 December 2023 7:10 PM
To: Ally Koehler <Ally.Koehler@parliament.govt.nz>
Subject: TVNZ Breakfast request - Fair Pay

Kia ora,

Hope you're well.

We're wondering if Minister Van Velden would be able to send us a statement regarding the leaked cabinet paper (on Fair Pay Agreements)?

Kind regards,

Claudia Toxopeus
Breakfast Producer

m. s 9(2)(a)



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Vidushi Challapali

From: Ally Koehler
Sent: Tuesday, 5 December 2023 8:01 am
To: Mary Direen; Lydia Jackson
Subject: Potential date: 90-days announcement

Kia ora team,

The PM's office is suggesting the Minister accompany the PM at next week's post-Cab to speak on [redacted] out of [redacted] FPAs. It sounds like a good opportunity. Wondering how things are getting on with the [redacted] out of scope [redacted]. I know you're working as quickly as possible. Would be great to get an ETA of when it could be with us.

Happy to discuss so feel free to call.

Thanks!

Ally Koehler (she/her) | Press Secretary (Transitional)
Office of Hon. Brooke van Velden
Minister for Internal Affairs | Minister for Workplace Relations and Safety
s 9(2)(a) [redacted] | Email ally.koehler@parliament.govt.nz

Hemanth Nair

From: Zach Boyle (Parliament)
Sent: Tuesday, 5 December 2023 6:13 pm
To: Stacey Campbell
Subject: RE: Draft Cabinet Paper - Fair Pay Agreements Act Repeal Bill Approval for Introduction and Draft Bill [IN-CONFIDENCE]

Thanks very much Stacey – will be in touch tomorrow!

Zach

From: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>
Sent: Tuesday, 5 December 2023 5:40 PM
To: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Cc: Hannah Adams <Hannah.Adams@mbie.govt.nz>; Beth Goodwin <Beth.Goodwin@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>; Katherine Macneill <Katherine.MacNeill@mbie.govt.nz>; Anita Ng <Anita.Ng@mbie.govt.nz>; Nic Blakeley <Nic.Blakeley@mbie.govt.nz>
Subject: Draft Cabinet Paper - Fair Pay Agreements Act Repeal Bill Approval for Introduction and Draft Bill [IN-CONFIDENCE]

Hi Zach,

Please find attached the draft Cabinet paper, **Repeal of the Fair Pay Agreements Act: Approval to Introduce** and the draft Bill, **Fair Pay Agreements Act Repeal Bill**.

If the Minister would like us to lodge on Thursday, we would need comments back by 2pm tomorrow. If we are lodging on Friday, COP tomorrow will be fine.

Thanks,

Stacey

Stacey Campbell ([she/her](#))

Senior Policy Advisor | Employment Relations Policy | Workplace Relations and Safety Policy Branch
Email - Īmera: Stacey.Campbell@mbie.govt.nz | DDI – Waea Tōtika: 901 4139

MINISTRY OF BUSINESS INNOVATION & EMPLOYMENT / HĪKINA WHAKATUTUKI
Level 6, 15 Stout Street, PO Box 1473, Wellington, New Zealand | www.mbie.govt.nz

Thanks Zach.

Thursday, 30 Nov • 9:55 am

Lodged :)



Whoop

Good to be back in the swing of things!

Monday • 3:37 pm

Hey, can I just check did Cab agree to all the recs in the cab paper? PCO would like confirmation we are introducing tomorrow.

Minister busy so I'm checking with CabOffice - but certainly would have thought all recs agreed to. Think I would've heard if not

3:46 pm

- Thanks!
- Okay, thanks
- 
- 

Text

s 9(2)(a)

2:14

Zech (Mine Office)

Monday, 9 Aug 2021

out of scope

Hi. This wasn't about a missed call. I was calling to ask something about FPAs. Hannah

Monday, 9 Aug 2021

Hi. We have just seen responses to the FPAs, repeat questions (email from o&e) and updated Cabinet paper (sent from Stacey). Hannah

Reply Reply All Forward

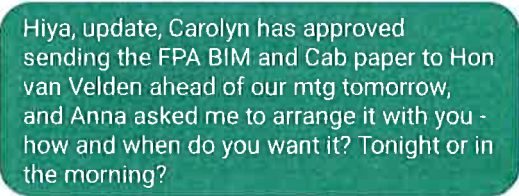
Thu 14/12/2023 2:15 pm

1:24

4G 76%

<  Zach Boyle (Hon Broo... ▾ ⋮

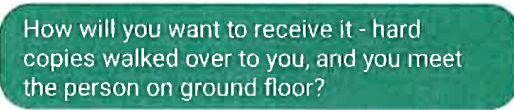
Monday, 27 November

5:00 pm  Hiya, update, Carolyn has approved sending the FPA BIM and Cab paper to Hon van Velden ahead of our mtg tomorrow, and Anna asked me to arrange it with you - how and when do you want it? Tonight or in the morning?

Sounds sensible! Tonight would be nice, but that would only be so I can have a look myself, so tomorrow morning also sweet if it still needs work

5:06 pm

5:13 pm  Ok it'll be first thing tomorrow then. Gayathiri and wanted KM to have a final look at the fiscal mentions

5:24 pm  How will you want to receive it - hard copies walked over to you, and you meet the person on ground floor?

Liked "Ok it'll be first thing tomorrow then. Gayathiri a..."

5:24 pm

Email should be sweet - I can print in the office. If IT is acting up I'll let you know and someone can walk them over

5:25 pm

5:26 pm  Ok great.

Tuesday, 28 November

9:12 am  Hi, are you in the office now? FPA BIM coming into your inbox shortly. 

||| ○ <

1:24

4G 76%

<  Zach Boyle (Hon Broo... ▾ ⋮

Yup in the office - perfect thanks 9:13 am

9:20 am 

Got it thanks. Min has separately just asked for our RIS also - can you send that over as well?

9:34 am

9:36 am 

9:56 am 

Liked "Sent" 10:00 am

out of scope
[Redacted]
2:36 pm

Good stuff just now - can you please resend the two FPA emails w papers from this morning as all my emails just got wiped

2:37 pm

4:22 pm 

Beauty cheers 4:29 pm

out of scope
[Redacted]
5:03

Wednesday, 29 November





1:25

76%

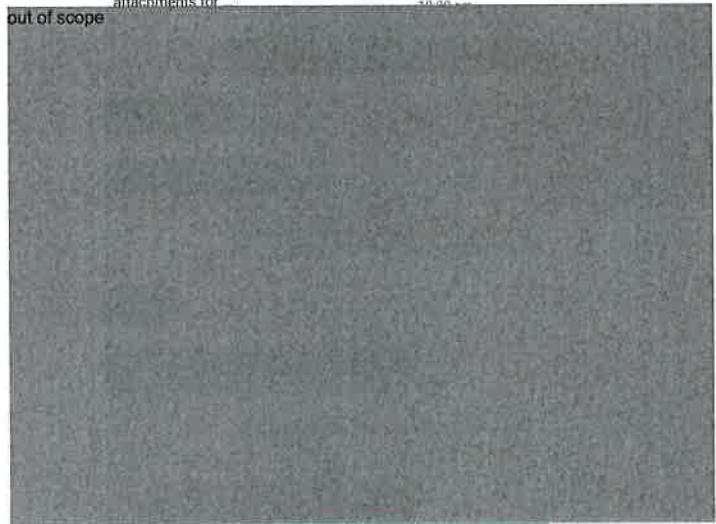
Zach Boyle (Hon Broo...)

10:17 am Also, FYI we have printed the RIS attachments for the FPA paper, as per Cab office requirements, cos it's about 70pages

10:19 am When do you need the barg sides info?

Be great to have by noon 10:19 am

Liked "Also, FYI we have printed the RIS attachments for"



Icons for gallery, camera, add, share, emojis, and voice recording.

Navigation icons: home, back, and forward.

1:25

76%

< **Z** Zach Boyle (Hon Broo... ▾ ⋮

Wednesday, 29 November

I'm going to bring some extras to that mtg. the leads on projects: Ben and Hannah

8:49 am And Mary Dreen

8:52 am What was the male advisor's name, who was in the mtg yesterday?

Sweet re 1pm. Stuart Wilson - he's David Seymour's advisor, but is coming down

s 9(2)(g)(i) 8:54 am

8:54 am Excellent thanks.

9:30 am I did get it, sorry. Onto it.

Just sent follow up email on FPA cab paper w some additional feedback from Stu

10:11 am

10:11 am Thanks

10:14 am Yep we can add that, and we'll get Emp Services to pull together list of the sides

Liked "Yep we can add that, and we'll get Emp Services to..."

10:15 am

Also, FYI we have printed the RIS attachments for the FPA paper, as per C...

📷 📷 + | 😊 🔊

☰ ○ <

1:25

4G 76%

< Z Zach Boyle (Hon Broo... v ⋮

12:39 pm Re email I have just sent you about FPA Bill timing, we have never been asked about FPA approval to introduce on 11 Dec, so we are surprised PCO has said yes they can do it

12:41 pm Oops now sent to your Parliament email address, not your MBIE one

11th is fine with us if the Bill is ready though

? 12:46 pm

12:48 pm MOJ's BORA vet is the other sticking point, we haven't tested this with them.

2:17 pm Hi, when we send you this cover briefing later today attaching revised FPA Cab paper etc for lodging (after Min makes decision on barg party funding) - are we still doing electronic only, or do you need us to print and walk?

Electronic only is all good 2:19 pm

2:19 pm 

Still keen to get the signed briefing back though please, we like paper trails 🙄

2:45 pm We won't wait for it though



1:25

4G 76%

< Z Zach Boyle (Hon Broo... v ⋮

2:46 pm We won't wait for it though

5:26 pm out of scope

Thursday, 30 November

Cab paper incoming in next 20 mins w some additional paras added overnight 8:48 am

Not 100% confirmed but Minister confident we can go direct to Cabinet for FPAs and out of scope on the 11th also. LoH said all good 8:49 am

8:50 am Great, thanks on both fronts!

9:15 am Thanks, Stacey is uploading papers to CabNet now

9:16 am Office's Cab paper changes look fine

1:55 pm Justine and I will walk across shortly to drop off the box of RIS copies, and show her where the office is - that still ok with you?

Yup just zipped out for a quick lunch but will be back in 15 if that works? 1:56 pm

1:56 pm Yep great. Will text you when we're in l

👤 📷 + 😊 🔊

⋮ ○ <

1:26

76%

< **Z** Zach Boyle (Hon Broo... ▾ ⋮

out of scope

Arati just called Anna, they want us to go to Cab Committees. We said not doable for the FPA approval to introduce paper (cos would have been a less than 24hr total turnaround for drafting + BORA vet), but

out of scope

6:21 pm

View all



out of scope



1:26

76%

< **Z** Zach Boyle (Hon Broo... ▾ ⋮

Hey, when you see the Minister can you find out if all recs were agreed at Cabinet please (including on the grant funding) - we need to get the ball rolling on drafting the Bill and stopping grant funding as soon as you tell us. There is no Minute online yet.

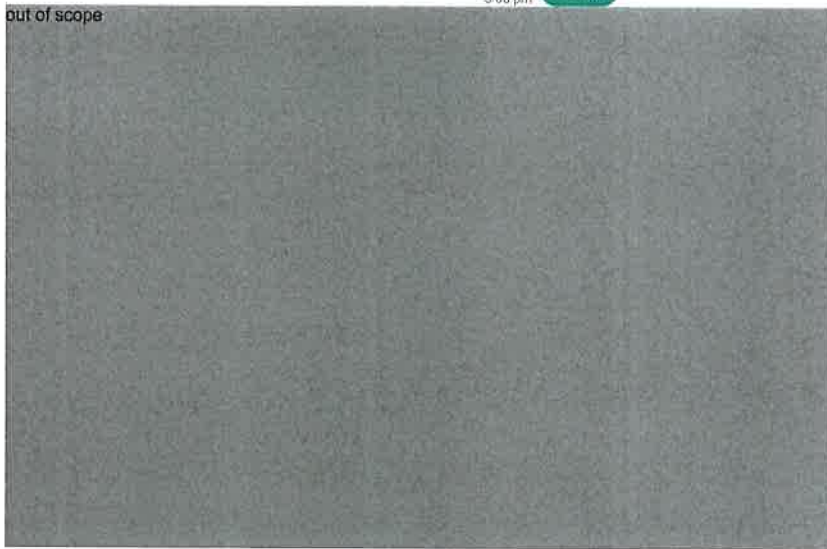
2:33 pm

All recs agreed to 2:54 pm

Thanks...

3:08 pm

out of scope



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One NZ

2:42 PM



Zach >

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Wants this arvo to
be v focussed on FPAs
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iMessage



One NZ

2:42 PM



Zach

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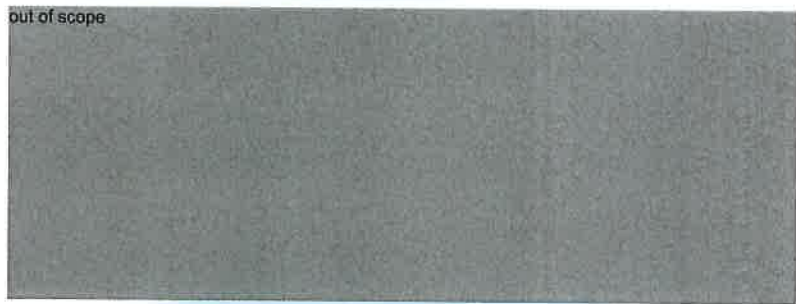


out of scope



Probably fine to keep it tight but if Katherine has insights about operational implications of repealing FPAs those would be good

out of scope



iMessage

Send Payment



From: [Beth Goodwin](#)
To: [Zach Boyle \(Parliament\)](#)
Cc: [Mary Direen](#); [Patricia Feria](#); [Lydia Jackson](#); [Anna Clark](#); [Hannah Adams](#); [Stacey Campbell](#)
Subject: RE: Submissions from FPAs policy work [UNCLASSIFIED]
Date: Wednesday, 6 December 2023 2:06:59 pm
Attachments: [Quotes from Select Committee submissions which opposed the FPA Bill.docx](#)

Kia ora Zach

Attached are the quotes we've pulled together from submitters at Select Committee who opposed the FPA system, as requested by your office. We've removed names of small businesses.

Note for those cc'd: We have pulled these from the spreadsheet we used to process submissions, but the subs are published on the Parliament website.

Beth

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
beth.goodwin@mbie.govt.nz | **s 9(2)(a)**
Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

Quotes from Select Committee submissions opposing the FPA Bill

Note: submissions on the Fair Pay Agreements Bill are publicly available at [Fair Pay Agreements Bill \(bills.parliament.nz\)](https://bills.parliament.nz). MBIE has selected quotes and grouped into themes. Names of small businesses or organisations have been removed.

Prepared 6 December 2023.

The legislation is a step backwards and too similar to the National Awards System

- **BusinessNZ:** "Every step of the proposed process of establishing an FPA is lengthy, bureaucratically cumbersome, costly and fraught with the risk of litigation. Instead, it reinstates the failed national occupational award system in existence between 1894 and 1991. In so doing, the Bill also fails to recognise the most basic lesson learned during that period, which is that even the award system recognised that one size did not fit all."

Additional costs to businesses and the system

Costs to employers

- **Horticulture New Zealand:** "This will be a burden on the Government to administer and compliance check yet another regulatory instrument being imposed on business. Most business will likely have to employ additional resource to administer the regime – where their margins are already very stretched."
- **Seeka** (on smaller businesses being unable to absorb regulatory compliance costs): "We are a large employer equipped with HR specialists but many of our partners, such as those orchards we provide advice to, do not have such expertise to hand. They will have the same regulatory burden that we do, and it is likely to increase the frequency and complexity of employment disputes."
- **Business Central** (on how increased costs within an FPA-covered industry would be a barrier to entry for new businesses): "With smaller firms exiting, and new firms entering the market, our market competition will be reduced, further limiting our innovation, and concentrating market share among larger businesses."
- **Dentons Kensington Swan:** "We have some concerns around smaller employers not being able to meet the minimum standards agreed to between larger employers and unions during bargaining. In particular, it could be possible for larger employers to use the system to set standards for pay and conditions under an FPA which they already have and can carry due to their large presence in the market, but which are too high for smaller businesses to remain viable. This could lead to unintended consequences in reducing competition within a market if businesses which cannot achieve the high minima set by the FPA fail."

Macro impacts – inflation, productivity and unemployment

- **Safe Business Solutions:** "Many New Zealand businesses export products and services to the global market... the addition of FPAs will further diminish New Zealand's ability to compete in global markets."
- **Federated Farmers of New Zealand:** "Employers are facing an ever-increasing range of compliance and the accompanying costs, following the difficult period of the impact of COVID-19 and the likelihood of an approaching recession. We are concerned that as employers face ever increasing administrative complexities and costs, some business owners will be forced to downsize or simplify their business to avoid employing people or some close the doors entirely."

Costs to consumers

- **Horticulture New Zealand:** “FPAs will result in additional costs and organisational compliance for growers. Growers cannot continue to absorb increased costs...If growers stop producing a variety of fruits and vegetables in New Zealand – or at worse, have to close their businesses – this will result in less local choice (and diversity of produce) for consumers, an increased price of kai for kiwis, and increased reliance on imports (including greater reliance on frozen, processed and canned food), which could potentially create greater food insecurity.”

Lack of flexibility

- **Simpson Grierson:** “Once a FPA is in place, it will constrain the flexibility of both employees and employers to agree to terms and conditions that best suit their particular circumstances.”
- **A family-owned construction company** (on how FPAs reduce the ability to reward individual excellence and result in loss of productivity/motivation of employees): “The introduction of this Act will cause resentment between workers resulting in a drop in productivity and extreme lack of motivation. People should be coming to work to better themselves and take new opportunities to grow, opening new pathways of pay increases and financial recognition. There would be no desire or reason for an employee to do this if remuneration and treatment is considered equal and ‘fair’ between all staff.”
- **A small family-owned promotions company:** “I have a very transparent and good relationship with our team and see any collective agreement that applies to our business will only start alienating my relationship with our small team. Having to negotiate an employment agreement via an unrelated third party may work in a large organisation, but certainly not in most small businesses.”
- **A small hospitality business:** “Our industry is already paying more...Market conditions, resulting from labour shortages caused by immigration disputation, have already driven hospitality industry wages up beyond what many businesses can afford. Many small hospitality businesses have already closed, or are operating reduced days/hours only, and they simply can’t pay more. The Fair Pay Agreements Act 2022 would represent further change that would go too far too fast, with damaging consequences.”

Concerns regarding freedom of association and issues of representation

- **Multiple submitters:** “The so-called Fair Pay Agreements regime would technically not amount to compulsory unionism, but in real terms would make New Zealand workers beholden to trade unions. It would seriously erode New Zealand workers’ right to freedom of association.”
- **Super Liquor:** “The Bill effectively pushes association membership on employees and employers when neither would otherwise consider association with the eligible union or employer association (as the case may be). It undermines the natural human right of freedom of association.”
- **New Zealand Shipping Federation:** “The right to freedom of association is protected by section 17 of New Zealand’s Bill of Rights Act. New Zealander workers must have the right to associate with a trade union where they wish to do so. But the right to freely associate with others includes the right not to associate where an individual does not wish to. This Bill has the effect of utilising the powers of the state to compel people who have in many cases consciously and explicitly chosen not to associate with a trade union or an employers’ association, to have a trade union or employer association represent them and their interest without their agreement. As a matter of principle, a liberal democratic state that purports to uphold human rights should not deprive its citizens of their basic right to choose who they associate with.”

- **Dentons Kensington Swan:** “There are significant questions regarding whether it is possible and fair to appoint representatives to bargain for a very different group of employers, especially where there is a real risk that smaller employers are likely to have a lower level of bargaining sophistication and power... Smaller employers who are not used to collective bargaining will have a more difficult time making their voices heard.”

From: [Hannah Adams](#)
To: [Zach Boyle \(Parliament\)](#)
Cc: [Beth Goodwin](#); [Stacey Campbell](#)
Subject: RE: Talking points for parliament - Repeal of FPA legislation.docx [IN-CONFIDENCE]
Date: Monday, 11 December 2023 9:54:56 am

Kia ora Zach

Today/tomorrow we will print and bind FPA Act Repeal Bill parliamentary packs containing:

- Clause by Clause (& Q&A)
- A copy of the Bill
- The two cabinet papers
- The legislative statement
- The departmental disclosure statement
- 2021 RIS
- 2023 RIS cover sheet

Would it be helpful if we printed and bound a copy for the Minister?

Ngā mihi
Hannah

Hannah Adams

Principal Policy Advisor

Employment Relations Policy, Labour, Science and Enterprise Branch
Hikina Whakatutuki | Ministry of Business, Innovation & Employment

Īmera: Hannah.Adams@mbie.govt.nz | Waea tōtika: +64 4 896 5262
Please note my working hours are 9.15am – 2.30pm Mon-Wed and 9am – 6pm Thurs

From: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Sent: Friday, 8 December 2023 3:13 pm
To: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>
Cc: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>;
Hannah Adams <Hannah.Adams@mbie.govt.nz>
Subject: RE: Talking points for parliament - Repeal of FPA legislation.docx [IN-CONFIDENCE]

Legends!! Thank you very much – hope you have a great weekend

Zach

From: Stacey Campbell <Stacey.Campbell@mbie.govt.nz>
Sent: Friday, 8 December 2023 3:00 PM
To: Zach Boyle <Zachary.Boyle@parliament.govt.nz>
Cc: Beth Goodwin <Beth.Goodwin@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>;
Hannah Adams <Hannah.Adams@mbie.govt.nz>
Subject: Talking points for parliament - Repeal of FPA legislation.docx [IN-CONFIDENCE]

Hi Zach,

We are sending:

- Talking points to use as the basis for your first, second and third reading speeches.
- An explanation of each clause of the Bill and what it does (including potential Q&As that may be asked in relation to the Bill)

As discussed, we have only attached the new documents for the Ministers weekend bag, but for the Ministers pack it would be useful to also include the documents we have previously sent:

- A copy of the Bill (noting, we will provide the final version once we have received it)
- The two cabinet papers
- The legislative statement
- The departmental disclosure statement
- 2021 RIS
- 2023 RIS cover sheet

Thanks,

Stacey

Stacey Campbell ([she/her](#))

Senior Policy Advisor | Employment Relations Policy | Workplace Relations and Safety Policy Branch

Email - Īmera: Stacey.Campbell@mbie.govt.nz | **DDI – Waea Tōtika:** 901 4139

MINISTRY OF BUSINESS INNOVATION & EMPLOYMENT / HĪKINA WHAKATUTUKI

Level 6, 15 Stout Street, PO Box 1473, Wellington, New Zealand | www.mbie.govt.nz

Talking points for House speeches: Repeal of Fair Pay Agreements legislation

[Note: The standing orders state that Ministers may no longer read from a speech at the first, second, or third readings of the Bill although they may speak from notes. Should a Minister read from a prepared speech, that Member will be sat down by the Speaker.]

Points that must be made in your speeches

You must start the first reading speech with this line

- I present to the House a legislative statement on the Fair Pay Agreements Act Repeal Bill.

[There will be a pause as the Speaker confirms the publication of the legislative statement]

- I move that Fair Pay Agreements Act Repeal Bill be now read a first time.

For the second and third reading speech, your speech must start with this line

- I move that the Fair Pay Agreements Act Repeal be now read a [second or third] time.

Your ending statement must include this line to conclude for first, second and third reading speech

- I commend this bill to the House.

Talking points that could be included in your speeches

Background

- In 2022, the previous Government introduced legislation for the Fair Pay Agreements (FPA) system. Under this system, 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.
- 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.

Repeal of the FPA legislation

What this Bill does

- This Bill repeals the Fair Pay Agreements Act, and associated amendments to other Acts and revokes associated regulations.
- Once the FPA Act is repealed, bargaining for initiated FPAs will cease as there will be no legislative mechanism to bring any agreements into force.

Why we are repealing Fair Pay Agreements

- The National and ACT parties opposed the development and introduction of the FPA legislation for many reasons.
- The FPA system removes the flexibility for employers and employees to agree to 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.

- This leads to rigid, one-size-fits-all agreements.
- This is the exact opposite of the flexibility that people want in today's rapidly changing workplace.
- 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 in that industry or occupation, regardless of whether or not they want to be included.
- This diminishes the fundamental right to freedom of association – which includes the freedom to not associate.
- The FPA system undermines the flexible labour market which has been a pillar for New Zealand's economic success for the past three decades.
- It makes our workplaces less agile, and the business environment less competitive. New Zealand businesses need the ability to adapt to their own unique conditions.
- If FPAs had been finalised, wage costs would have increased for affected businesses.
- This would have risked increasing the prices of goods and services for consumers.
- The increase in labour costs would also have negative effects, such as employers choosing to hire fewer people or reducing hours of work due to higher costs associated with employment.
- Some businesses would have also been at risk of closure.
- We all want higher wages and better conditions - especially during the cost-of-living crisis.
- The best and most sustainable way to increase the wages of workers and to lower prices for consumers is to improve businesses' productivity.
- FPAs risk harming New Zealand's already dismal productivity growth.
- Repealing the FPA legislation will improve business certainty, which is crucial for business growth and investment.
- This ensures a flexible and innovative economy, where New Zealanders can create new opportunities through freedom.

Transitional provisions

- As no agreements have been finalised in any industry or occupation, there are no transitional arrangements required for the FPAs that have been initiated.

Timeframes

- Six FPAs have been initiated since the FPA legislation has come into force. However, 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 the negative impacts are felt by the labour market.

From: [Beth Goodwin](#)
To: [Zach Boyle \(Parliament\)](#)
Cc: [Hannah Adams](#); [Stacey Campbell](#); [Mary Direen](#); [Anna Clark](#)
Subject: Suggested speech notes for Minister FPA House speeches [IN-CONFIDENCE]
Date: Tuesday, 12 December 2023 3:26:42 pm
Attachments: [FPA repeal speech themes for Minister.docx](#)

Hi Zach

Suggestions for topics the Minister could cover in her House speeches on the FPA repeal this week. We've divided into 3 big themes: rigidity, specific issues with the FPA system, and why we need a flexible labour market. But the office should of course feel free to mix and match, or take only parts if they prefer. Just note the tabbed-in quotes are placed to relate to the bullet immediately above them.

Beth

BETH GOODWIN
Manager, Employment Relations Policy

Workplace Relations and Safety Policy Branch | Ministry of Business, Innovation & Employment
beth.goodwin@mbie.govt.nz | [s 9\(2\)\(a\)](#)
Level 6, 15 Stout St, Wellington 6011 | PO Box 1473, Wellington 6140, New Zealand

Title	Fair Pay Agreements Repeal legislation – themes for speeches
Purpose (internal, external, MBIE, Minister)	To support Minister van Velden with the speeches to repeal the FPA legislation.
Date including any embargo	11/12/23
Is this for public release?	Not for external release
Approved by	Beth Goodwin

Theme 1: The effect of any rigid system

- Rigid employment regulation can be stifling for businesses and employees.
- Fair Pay Agreements (FPAs) create rigidity. They would have set legally binding minimum standards on every employer and worker in coverage, bargained by a minority, and only needing a bare majority in favour for the final agreement to go through.
- BusinessNZ stated that the Fair Pay Agreement system fails to recognise the most basic lesson learned during the period of the award system, which is that one size does not fit all.
- I agree with BusinessNZ. The FPA system removes the flexibility for employers and employees to agree to 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.
- This leads to rigid, one-size-fits-all agreements.
- This is the exact opposite of the flexibility that people want in today's rapidly changing workplace.
 - "Why has a complicated and convoluted piece of legislation that will make it more difficult for businesses to operate been introduced to solve a problem that does not exist? New Zealand enjoys some of the best employment relations in the developed world, with flexibility and agility that we cannot lose. So what are we fixing?" Leeann Watson. CEO of Canterbury Employers Chamber of Commerce

Loss of confidence in hiring employees

- Rigidity can make business less confident to hire new workers, because the costs and the bureaucracy are so high.

Reduced ability to reward high-workers, undermining employees' productivity

- It can cause businesses to stop performance-based pay rises, because any spare cash needs to go towards meeting the high minimum standards
- This reduces the ability for employers to reward individual excellence and means that high-performing workers will get the same pay as poor performers.
- This in turn may result in a loss of productivity or motivation of employees.
 - Troake Wallboards submitted on the FPA Bill, stating that it "will cause resentment between workers resulting in a drop in productivity and extreme lack of motivation.

People should be coming to work to better themselves and take new opportunities to grow, opening new pathways of pay increases and financial recognition. There would be no desire or reason for an employee to do this if remuneration and treatment is considered equal and 'fair' between all staff."

Diminished innovation, productivity and competitiveness of businesses

- Rigidity stops businesses from doing things differently, making it harder to innovate or be more productive and competitive.
 - The Meat Industry Association of New Zealand, in its submission on the FPA Bill, emphasised the importance of flexibility in the productivity of its industry, stating, "In the past three decades, the meat industry has achieved impressive productivity gains, in large part due to individual businesses tailoring their employment relations to best suit their supply chains and production... Productivity rates have increased by approximately 90 percent, largely due to the flexibility allowed for companies to innovate and tailor their processing operations, including pay methods, to address meat industry specific challenges."
 - Safe Business Solutions stated in its submission on the FPA Bill, "Many New Zealand businesses export products and services to the global market... the addition of FPAs will further diminish New Zealand's ability to compete in global markets."
- At its extreme, FPAs could have caused businesses to close down.

Inability of employees to trade off terms and conditions

- Rigidity can also frustrate workers – they have less freedom to agree to a set of terms and conditions that work for them, their life and their family.
- For example, an employee may value having more holiday leave, to spend with their kids in the school holidays. They might want to trade off a lower base wage rate in return for more holidays.
- But if an FPA were to set a high minimum base wage rate, the employer can't agree to that trade off, even if the employee asks for it.
 - Taylor Preston submitted on the Bill and said that it "has a strong emphasis on non-pay benefits for employees – examples are free transport to and from work, free doctors clinics whether work related or not, interest free loans to avoid loan sharks or predatory lenders and significantly discounted staff meat sales... Fair Pay Agreements are more likely than not to drive wage costs up, with the real risk that valuable non-wage benefits will suffer."

Unpredictability

- That involves assumptions about what the FPA might contain – but that's the point. It's not possible to predict what would be contained in a Fair Pay Agreement, and how much rigidity they would impose. A Fair Pay Agreement would be set by a minority of representatives from both sides, or set by the Employment Relations Authority.
- I believe that uncertainty itself is stifling for business.

Risk of inflation

- I am concerned that FPAs would have caused those business cost increases to be passed on in the pricing of consumer goods and services – adding to the inflation and high cost of living we are all feeling.

Theme 2: Specific issues with the current system

- Not only does the whole overall rigidity frustrate employers and employees
- But this Fair Pay Agreements system has some specific design elements which could really make life hard.
- They include:
 - The lengthy bargaining process
 - The cost to business to implement
 - The complexity

Lengthy/costly bargaining process resulting in terms and conditions that do not suit business needs

- Fair Pay Agreements is a complex system of bargaining, involving representation systems, many steps and obligations.
- I know that in response to a question from the Select Committee last year, MBIE's best estimate was that a Fair Pay Agreement bargaining process would take at a minimum 15.5 months.
 - BusinessNZ when submitting on the FPA Bill, commented that "Every step of the proposed process of establishing an FPA is lengthy, bureaucratically cumbersome, costly and fraught with the risk of litigation. It reinstates the failed national occupational award system in existence between 1894 and 1991. The complexity of the FPA system, coupled with an onerous, union-centric bargaining regime, will require a significant investment of time and resources for employers and may in fact create more inefficiencies and costs. This burden is likely to be felt disproportionately for small businesses." Report from PWC.

Higher administrative costs to the business/industry

- FPAs would have set new minimum terms and conditions that would create rigidity in the labour market leading to higher costs and added complexity for businesses.
- Hospitality New Zealand raised concerns with the rigidity of the FPA system, in particular the ability to 'stack' roles and how this would be accounted for in an FPA.
- 'Stacking' is when one employee would often perform a range of roles, for example, an employee could be a receptionist, a cleaner and a waiter in the hotel restaurant. It enables employers to offer more attractive full time roles.
- Stacking is common in the hospitality industry, and I know it's a useful tool in remote businesses.
 - Hospitality NZ noted at Select Committee that "in real-world terms, stacking will often be too hard and/or too expensive under a FPA regime."

Complexity

- An FPA can contain different terms for employees in different districts.
- So imagine a nationwide employer like a retail chain – they might have employees in shops dotted right across New Zealand, all subject to slightly different terms of an FPA.
- Or even a small employer with only two shops in two neighbouring towns – if the towns fall across the dividing line for a region, even that small employer, with no human resources department, might have to comply with two different sets of FPA terms.
- And what about a trucking firm, whose drivers deliver goods the length of the country – the employer would really want to comply with this law, but how do they work out which rate applies? Where do those drivers work for “the majority of their time”?
- I want our employers spending their time improving their products, their processes, their customer service – not trying to understand what law applies to them.
 - "You cannot kind of put a whole bunch of businesses in the same category, when they're different sizes and different geographical locations around New Zealand. It would have been quite hard to deliver on, we believe." Catherine Beard, Business NZ

Theme 3: Why we need a flexible labour market

- This government is focused on lifting New Zealand’s productivity and economic growth to increase opportunities and prosperity for all New Zealanders
- We are focussed on boosting productivity, becoming more competitive, and creating a healthy economy.
- That’s why we’re repealing this legislation. We want to prevent more bureaucracy being piled onto businesses and we are backing business to grow.
- As we have covered in this House, the Fair Pay Agreements system undermines the flexible labour market which has been a pillar for New Zealand’s economic success for the past three decades.
- To lift productivity and drive economic growth we need agile and flexible workplaces. An example of flexibility and choice would be where employers and employees can agree terms that suit their unique situation.
- The best way to increase the wages of workers and lower prices for consumers is to improve productivity and create an environment where business can operate competitively.
- Productivity increases when businesses operate in a competitive environment where Government legislation drives positive impacts not unnecessary complexity.
- We’ve heard from business owners that they want certainty so they can be confident with their growth and investment planning.
- If we didn’t repeal this legislation then the costs of wages and a range of other employment terms, would have increased for affected businesses.
- Repealing this legislation ensures a flexible and innovative economy, where New Zealanders can create new opportunities through freedom.
- It is not true to say that other countries that we compare ourselves to have similar systems. In fact, the Working Group found no international model for collective bargaining that could be readily applied to New Zealand.

- A combination of sector, enterprise and individual bargaining is recommended by the OECD. My immediate focus is on repealing the FPA system, as we committed to do in our coalition agreement.
- I look forward to announcing more plans and policies as part of my work programme over the next three years.
- I am focussed on ensuring we are improving and strengthening our employment system so we can enable both employees and employers to thrive.

Commentary:

“New Zealand aspires to develop more frontier firms that are technology-based, global and competitive. We need those firms to be able to be agile and flexible, not saddle them with last century regulation. That’s where high income employment growth will come from, it is already happening with companies like Fisher & Paykel Healthcare, Rakon, and RocketLab.” EMA media release Dec 2021 [Fair Pay Agreements anything but fair \(ema.co.nz\)](https://www.ema.co.nz/news/fair-pay-agreements-anything-but-fair)

“By doing things such as repealing Fair Pay Agreements and reforming employment and other health and safety laws, the Government will create a better business environment.” Auckland Chamber of Commerce CEO, Simon Bridges.

< Z Zach Boyle (Hon Broo... v ⋮

2:04 pm Ok great thanks

Min really appreciated the supps doc - found very helpful. Thanks! 2:21 pm

2:27 pm Oh good! Thanks for the feedback

5:04 pm Update, yep we're looking on track to get you the FPA COWH pack tomorrow. What's our deadline to ensure it make the Min's weekend bag?

3pm to be safe! 4 is hard deadline 5:05 pm

5:09 pm We just got notification the BORA vet is clear.

Monday, 11 December

2:36 pm We'll send that FPA speech material to you early tomorrow, so we can incorporate anything useful out of post-Cab, is that OK?

Yeah that makes sense - all good 2:36 pm

Tuesday, 12 December

10:22 am FPA speech material not yet looking useful, needs more work. Are you being chased for it? I want to get it across to you just before Min /Jenesa work on the speeches, do you know when they are planning to do that?

