



BRIEFING

Revised LEG paper for ministerial consultation: *Regulations under the Fair Pay Agreements Act 2022*

Date:	20 October 2022	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-1426

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Agree that regulations should name Business New Zealand and the New Zealand Council of Trade Unions as voluntary default bargaining parties.	25 October 2022
	Agree to circulate the revised LEG paper - <i>Regulations under the Fair Pay Agreements Act 2022</i> to your ministerial colleagues for consultation.	25 October 2022

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Manager, Employment Relations Policy	04 901 1611	Privacy of natural	✓
Latisha Kumar	Policy Advisor, Employment Relations Policy	04 830 7203		

The following departments/agencies have been consulted
Department of the Prime Minister and Cabinet, Treasury, Ministry of Justice, Ministry of Social Development, Ministry of Disabled People, Ministry for Women, Ministry of Education, Inland Revenue Department, Ministry of Health, Department of Corrections, Ministry of Transport, New Zealand Transport Agency, Te Puni Kōkiri, Oranga Tamariki, Office of the Privacy Commissioner, Ministry of Foreign Affairs and Trade, Ministry for Pacific Peoples, New Zealand Defence Force, New Zealand Police, Public Service Commission.

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 Withdrawn |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

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Date:	20 October 2022	Priority:	High
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Purpose

To provide you with a revised version of the LEG paper '*Regulations under the Fair Pay Agreements Act 2022*' for ministerial consultation beginning on Tuesday, 25 October 2022.

This paper has been revised since your last review to incorporate comments from the first round of agency consultation.

Recommended action

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

- a **Note** the LEG paper '*Regulations under the Fair Pay Agreements Act 2022*' has been revised following an initial round of agency consultation.

Noted
- b **Note** before naming the employee and employer default bargaining parties in regulations, clause 5(3) of the Fair Pay Agreements Bill requires you be satisfied that the named organisations are the most representative organisation for unions and employers respectively.

Noted
- c **Agree** that you are satisfied Business New Zealand and the New Zealand Council of Trade Unions are the most representative organisations of employers and unions (respectively) and should be named in the regulations as the elected voluntary default bargaining parties.

Agree / Disagree
- d **Agree** to circulate the revised LEG paper '*Regulations under the Fair Pay Agreements Act 2022*' to your ministerial colleagues for consultation.

Agree / Disagree
- e **Note** the Fair Pay Agreements Regulations 2022 are still being drafted by PCO, and we expect to provide you and agency stakeholders with draft regulations in the first week of November 2022.

Noted
- f **Note** MBIE and PCO will then finalise the Cabinet paper and regulations for submission to Cabinet Office on 10 November 2022, for LEG on 17 November 2022.

Noted

g **Note** that test analysis on the public interest test criteria thresholds proposed in our advice *Fair Pay Agreements: Further specificity for public interest test criteria regulations* [2223-1335 refers] shows the two worker categories tested would both meet three out of four of the criteria (including 'low pay').

Noted



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

20 / 10 / 2022

Hon Michael Wood
Minister for Workplace Relations and Safety

..... / /

The Cabinet paper for FPA regulations is ready for ministerial consultation

1. You have indicated your intention to begin ministerial consultation on the draft LEG paper 'Regulations under the Fair Pay Agreements Act 2022' on Tuesday, 25 October 2022.

Changes made to the paper following agency consultation

2. Concurrent with your review of the draft LEG paper, the paper was circulated for agency consultation. The five agencies that provided feedback were supportive of the paper and did not provide substantive comments.
3. Te Puni Kōkiri noted that Cabinet currently has a strong focus on ensuring better compliance with the 28-day-rule unless there is a good reason clearly established. In response to this, we have amended the draft LEG paper (paragraph 27 refers) to strengthen the rationale for seeking a waiver of the 28-day rule:
 - a. The current rationale for seeking a waiver of the 28-day rule for the FPA regulations is that the regulations confer only benefits on the public, since they provide certainty and clarity to the public about the meaning of the Bill's provisions.
 - b. They also primarily enable a regulator to assess applications to initiate bargaining for FPAs and support applicants to gather the necessary information required in an application.
4. We agree with Te Puni Kōkiri that there is a risk the above grounds are not seen as sufficiently robust to waive the 28-day rule.

The paper will be circulated for a second round of agency consultation next week

5. Given the tight timeframes and resource pressures, agency consultation progressed on the draft LEG paper without the draft regulations attached. We will give agencies another opportunity to comment on the paper alongside the draft regulations, which are expected to be ready on Thursday, 27 October 2022. We will also provide you with the draft regulations the following week for review, and for subsequent inclusion in ministerial consultation.
6. We have discussed with you and your office that this therefore means that the second round of agency consultation will occur alongside ministerial consultation, and the first half of ministerial consultation will progress without the draft regulations.

Further development of the regulations

Specifying approximate numeric thresholds for the public interest test criteria

7. The draft LEG paper includes the percentage figures for the public interest test criteria as recommended in our advice *Fair Pay Agreements: Further specificity for public interest test criteria regulations* [2223-1335 refers]. You indicated you were broadly comfortable with the figures recommended, but sought testing of the percentage figures against example occupational groups before agreeing to our recommendations.
8. Stats NZ undertook test analysis on the following two worker categories, defined under the Australian New Zealand Standard Classification of Occupations (ANZSCO) system¹: Hospitality Workers (43); and Cleaners and Laundry Workers (81). While these groups are large (2-digit ANZSCO sub-major group), they are still relevant for testing the thresholds as

¹ ANZSCO is a skill-based classification system used to classify occupations and jobs in the Australian and New Zealand labour markets. It defines occupations according to their attributes and groups them into six hierarchical levels.

they contain lower-level worker categories that could require or benefit from the public interest test to initiate an FPA.

9. Both worker categories would meet the public interest test, as demonstrated in **Annex Two**. The analysis shows the two worker categories would meet three out of the four criteria, including the 'low pay' criterion. While both groups do not meet the fourth criterion, we consider that the proposed percentage figures in briefing 2223-1335 are still fit for purpose. Furthermore, these two groups are large and comprise lower (more granular) ANZSCO level groups that may have more significant labour market issues and could meet this fourth criterion.

Confirming BusinessNZ and New Zealand Council of Trade Unions are the most representative organisations

10. Before formally naming the employee and employer default bargaining parties in the regulation, clause 5(3) of the Fair Pay Agreements Bill (the Bill) requires you be satisfied that the named organisations are indeed the most representative organisation for unions and employers respectively. This provision was amended during select committee to make it a subjective test as it would be difficult to objectively determine which organisations are the most representative of unions and employers.
11. In March 2022, Cabinet decided that the New Zealand Council of Trade Unions and BusinessNZ would act as default employee and employer bargaining parties [CAB-22-MIN-0080.02, paragraphs 9 and 10 refer]. Our view is that these organisations were, and continue to be, the most representative organisations for unions and employers respectively, and should be named in the regulations.
12. To comply with clause 5(3) of Bill, we recommend that you agree that you are satisfied that Business New Zealand and the New Zealand Council of Trade Unions are the most representative organisations for unions and employers respectively.

Next steps

13. Following ministerial consultation and the second round of agency consultation, we will amend the paper and regulations to incorporate feedback received ahead of lodgement on Thursday, 10 November 2022.
14. The paper and regulations will then be considered by LEG on Thursday, 17 November 2022. If there are any delays, for example if the regulations cannot be prepared in time, the paper and regulations could instead be considered by LEG on 24 November 2022, and made in time for commencement.
15. Talking points for the LEG meeting will be provided to your office closer to the time.

Annexes

Annex One: LEG paper for ministerial consultation – *Regulations under the Fair Pay Agreements Act 2022*

Annex Two: Test analysis of the public interest test criteria thresholds on Hospitality Workers and Cleaners and Laundry Workers

Annex One: LEG paper for ministerial consultation – Regulations under the Fair Pay Agreements Act 2022

Annex Two: Test analysis of the public interest test criteria thresholds on Hospitality Workers and Cleaners and Laundry Workers*

Key	
Criteria threshold met	Criteria threshold not met

Public interest test criteria description thresholds		Hospitality workers**	Cleaners and Laundry workers***
Low pay	<i>at least approximately 60 percent of employees are receiving an hourly rate of pay that is equal or close to the hourly minimum wage; and</i>	89% of workers are paid between 80 to 120% of the minimum wage	84% of workers are paid between 80 to 120% of the minimum wage
	<i>less than approximately 30 percent of employees are receiving an hourly rate of pay that is close to the hourly median wage or higher.</i>	<11% (given that the current median wage of \$29.66 is more than 120% of the minimum wage)	<16% (given that the current median wage of \$29.66 is more than 120% of the minimum wage)
Little bargaining power	<i>Less than approximately 20 percent union representation or coverage</i>	6% of workers are members of a union	8% of workers are members of a union
	<i>less than approximately 20 percent collective agreement coverage</i>	9% of workers are on a collective agreement	12% of workers are on a collective agreement
Lack of pay progression	<i>At least approximately 60 percent of employees experience no, or minimal, increases in wages over time...</i>	On average, workers who have worked for less than one year ('new') earn 91.3% of what workers who have worked for more than 3 years ('experienced') earn on average on a per hour basis. ****	On average, workers who have worked for less than one year ('new') earn 99.8% of what workers who have worked for more than 3 years ('experienced') earn on average on a per hour basis. ****
	<i>evidenced by less than approximately 20 percent in pay between recently hired employees and employees who have been in the same role or occupation for a relatively long time</i>		
Long or unsocial hours, or contractual uncertainty, that is not adequately compensated	<i>At least approximately 60 percent of employees in a covered industry or occupation are:</i> <ul style="list-style-type: none"> working more than 40 hours in a week with most hours or days worked being outside of standard business hours or days; or receiving variable levels of income from work on a weekly or fortnightly basis; or on casual or temporary employment contracts. 	7.8% of workers work more than 40 hours per week ***** 14.8% of workers are on temporary or casual contracts	10.2% of workers work more than 40 hours per week ***** 13.8% of workers are on temporary or casual contracts
Does occupation meet the 'low pay' criteria plus at least one of the other three criteria?		Yes	Yes

* Disclaimer: Access to the data used in this study was provided by Stats NZ under conditions designed to give effect to the security and confidentiality provisions of the Data and Statistics Act 2022. The results presented in this study are the work of the author, not Stats NZ or individual data suppliers.

** Data from Statistics NZ as of 19/10/2022. Size of occupation group (ANZSCO code 43) is 38,500 individuals

*** Data from Statics New Zealand as of 11/10/2022. Size of occupation group (ANZSCO code 81) is 33,500 individuals

**** This is the closest calculation method that could be done in the available time that models the description requirement. While more granular analysis is needed to address the *60 percent* aspect, the data quite clearly showed for both occupational groups that there were very marginal differences in pay when workers were segmented by years of experience. We consider there is a very high likelihood they would meet this criterion.

***** We were unable to calculate the 'variable levels of income' aspect. Therefore it is possible that the criterion could be met through this aspect, but we cannot know for sure.