MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Brooke van Velden	**Portfolio**	Workplace Relations and Safety
Title of Cabinet paper	Freedom of Choice and Cutting Red Tape at the Beginning of Employment	**Date to be published**	21 May 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
April 2025	Freedom of Choice and Cutting Red Tape at the Beginning of Employment	Office of the Minister for Workplace Relations and Safety
27 April 2025	Freedom of Choice and Cutting Red Tape at the Beginning of Employment ECO-25-MIN-0046 Minute	Cabinet Office
25 March 2025	Regulatory Impact Statement: Removing the 30 day rule and reducing the related information disclosure and reporting requirements for employers	MBIE
30 January 2025	BRIEFING-REQ-0008194: Initial process options for considering changes to the 30 day rule	MBIE

Information redacted **YES / NO** *(please select)*

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of privacy of natural persons and confidential advice to government.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Initial process options for considering changes to the 30 day rule

Date:	30 January 2025	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	BRIEFING-REQ-0008194

Action sought		
	Action sought	**Deadline**
Hon Brooke van Velden **Minister for Workplace Relations and Safety**	**Direct** officials on your preferred approach to work on the 30 day rule	7 February 2025

Contact for telephone discussion (if required)				
Name	**Position**	**Telephone**		**1st contact**
Beth Goodwin	Manager, Employment Relations Policy	0 901 1611	Privacy of natural persons	✓
Tim Spackman	Senior Policy Advisor, Employment Standards Policy	04 897 5059		
Vidushi Challapali	Senior Policy Advisor, Employment Relations Policy	04 901 1669		

The following departments/agencies have been consulted
Ministry of Foreign Affairs and Trade

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

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BRIEFING

Initial process options for considering changes to the 30 day rule

Date:	30 January 2025	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	BRIEFING-REQ-0008194

Purpose

You have asked for advice on repealing the current temporary (30 day) Collective Employment Agreement (CEA) coverage for new employees who are not part of a union, via the Employment Relations Amendment Bill (ERAB). This briefing provides you with background information and seeks your direction on the approach.

Executive Summary

The '30 day rule' means that if an employer has a CEA in place that covers the work of the employee, for the first 30 days of their employment, the employee's Individual Employment Agreement (IEA) reflects the terms of the CEA that would bind the employee, if the employee were a member of the union. Closely related provisions require the employer to pass on information about union membership to the employee (including a copy of the CEA), and to advise the relevant union(s) if the employee decides against union membership.

We seek your decision on the approach you wish to take for repealing the 30 day rule (and related requirements). You could:

a. instruct MBIE to draft a Cabinet paper (without further policy advice) which seeks decisions to repeal employers' obligations at the start of employment (Option 1) – your office indicated you may be interested in this option; or

b. receive further advice on repealing employers' obligations at the start of employment (Option 2); or

c. instruct MBIE to stop work in this area (Option 3).

Under Option 1, there are three sub-options for which employer obligations you would seek to repeal:

a. Option 1A: Remove just the 30 day rule (closely related rules prescribing the information employers must provide to the employee and union(s) would remain in place).

b. Option 1B: Remove the 30 day rule and revert the rules on information provision to those that existed from 2015-2019 (during which period the 30 day rule was repealed).

c. Option 1C: Remove the 30 day rule and all specific requirements to communicate information on union membership to the employee and union(s).

Option 1 can be achieved without impacting the current ERAB timeline but does not have the benefit of a full policy process including consultation. Option 2 allows for a fuller policy process, including impact analysis of the sub-options and stakeholder consultation – but would result in the ERAB being passed in approximately quarter one of 2026.

Regardless of the option you choose, we wish to discuss your objective (s) in repealing the employers' obligations.

Recommended action

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

a **Note** that employers have obligations when a new employee begins employment, including the 30 day rule and related requirements to communicate certain information on union membership to the employee and union(s).

Noted

b **Agree** to progress one of the three following options:

Option 1: Instruct MBIE to draft a Cabinet paper which seeks decisions to repeal employers' obligations at the start of employment, with no further advice sought from MBIE (*choose one of the suboptions below)*

Option 1A: Remove just the 30 day rule; OR	*Agree / Disagree*
Option 1B: Remove the 30 day rule and revert the related information (disclosure and reporting) requirements to those that existed from 2015-2019; OR	*Agree / Disagree*
Option 1C: Remove the 30 day rule and all specific requirements to communicate information on union membership to the employee and union(s)	*Agree / Disagree*

OR

Option 2: Receive further advice on employers' obligations at the start of employment (where CEA exist) *(choose one of the suboptions below)*

Option 2A: Minimal stakeholder consultation; OR	*Agree / Disagree*
Option 2B: Moderate stakeholder consultation	*Agree / Disagree*

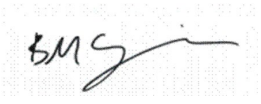
OR

Option 3: Stop work on repealing the 30 day rule and related provisions.

Agree / Disagree

c **Agree** to discuss your goals/objectives in relation to the 30 day rule (and related obligations) with MBIE officials, to inform future policy advice and/or your Cabinet paper.

Agree / Disagree



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

30 / 01 / 25

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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Background

1. You have asked for advice on repealing the current temporary (30 day) collective employment agreement (CEA) coverage for new employees who are not part of a union via the Employment Relations Amendment Bill (ERAB). This briefing provides you with background information and seeks your direction on the approach.

Employers have obligations at the start of an employment relationship, including the 30 day rule

2. The term '30 day rule[1]' refers to the current requirement that if an employer has a CEA in place that covers the work of the employee, for the first 30 days of their employment, an employee's Individual Employment Agreement (IEA) reflects the terms of the CEA that would bind the employee, if the employee were a member of the union. The employee and employer can also agree to additional terms that are no less favourable than the terms in the CEA (these can be new terms, or can be on the same topic but more generous than the terms and conditions in the CEA). When the 30 days is over, the employer and employee can negotiate different terms if they wish.

3. Closely interrelated provisions exist in the Employment Relations Act 2000 (the Act)[2], which require employers to disclose information about relevant unions and any relevant CEA to the new employee[3] ("information disclosure requirements") and report the employee's decision regarding union membership to the relevant union (unless the employee specifically requests the employer not to)[4] ("reporting requirements"). These obligations on employers are partly discharged through the use of an 'Active Choice Form'[5] which allows the employee to communicate their decision regarding union membership to their employer. The Active Choice form is provided in Annex One.

4. When stakeholders refer to the ''30 day rule' they may be referring to all these requirements together. If you elect to repeal the 30 day rule, it is necessary to decide which requirements are encompassed by the term itself (i.e. precisely which requirements you would seek to repeal). Some description of the legislative history is useful to unpack the choices available (i.e. narrow vs a broad interpretation).

Different versions of these requirements have existed throughout the Employment Relations Act era (since 2000)

5. Different Governments have taken contrasting approaches to regulating situations where a relevant CEA exists, and a new employee has a choice to be covered by it or an IEA. Broadly speaking:

    a. Labour-led Governments have favoured more extensive regulatory requirements that give prominence to the CEA option in a range of ways for the first 30 days of employment.

    b. The National-led Government's legislative approach treated one-off disclosure by the employer (about the existence of a relevant union, and a copy of the CEA) as sufficient to ensure employees can make an informed personal choice (i.e. enough to overcome potential information asymmetry).

[1] Contained in section 62 of the ER Act.
[2] https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html
[3] Contained in section 63B of the ER Act.
[4] Contained in section 62A of the ER Act.
[5] Contained in section 62A of the ER Act.

6. In part, these different approaches can be understood to reflect (in different ways) a main objective of the Employment Relations Act.[6] Both "promoting collective bargaining" and "protecting the integrity of personal choice" are specifically listed as methods to achieve the Act's first object. While the approaches both have elements of each method, they are given differing weight.

7. The policy shifts are summarised in the following table.

	Original Act (2000-2015)	**National-led Government version (2015-2019)**	**Labour-led Government version (2019-now)**
30 day rule	Included.	Repealed.	Included.
Information disclosure to employee	Included. The employer must inform the employee about unions and the CEA and provide a copy of the CEA to the employee.	Included. As per original Act, but with minor amendments to reflect the 30 day rule's repeal.	Strengthened. In addition to the original requirements, unions can also pass on information to the employer that must be provided to the employee.[7]
Reporting employee's decision on union membership to union(s)	Included. Employer must inform union "as soon as practicable" of employee's decision *if employee agrees.*	Included. Employer must inform union "as soon as practicable" of employee's decision *if employee agrees.*	Strengthened. Within 10 days after the 30 day period ends, employer must inform union of all information specified in the Active Choice Form, *unless employee specifically objects*.

8. The current obligations are the most extensive of the three time periods in the table above. As the table shows, in its current version, the 30 day rule is supported by strengthened disclosure and reporting requirements. However, when the 30 day rule was last repealed (2015-2019), some disclosure and reporting requirements remained in place – these have been common since the inception of the Act.

9. Since 2019, the way an employer reports an employee's decision about union membership has been more clearly prescribed with the Active Choice Form and statutory timeframes for certain information to be communicated. The requirements that existed prior to 2019 were less prescriptive.

10. The section below outlines your options to repeal the 30 day rule and related requirements through the ERAB.

Options to repeal employers' obligations at the start of employment

11. We seek your decision on the approach you wish to take with respect to repealing some or all of the obligations on employers at the start of employment (described above). You could:

[6] One objective of ER Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.
[7] Contained in section 30A of the ER Act

a. instruct MBIE to draft a Cabinet paper which seeks decisions to repeal employers' obligations at the start of employment (Option 1) – we are providing this option as your office indicated you may be interested in this option; or

b. receive further advice on repealing employers' obligations at the start of employment (Option 2); or

c. instruct MBIE to stop work in this area (Option 3).

12. Option 1 is the fastest. However, it does not have the benefit of a fuller policy process and our Regulatory Impact Statement (RIS) is likely to receive a low score, possibly a 'does not meet' the RIS requirements, in particular due to the lack of consultation. As we haven't delved into the options in depth, there are also risks that complications or unintended consequences are uncovered later.

13. If you choose Option 1, the next step is to take a paper, along with a RIS, to Cabinet, seeking policy approval and authority to instruct Parliamentary Counsel Office (PCO) to draft. PCO will draft the changes as part of the ERAB. This can be achieved without impacting the current ERAB timeline.

14. Option 2 will extend out the ERAB timeline, which would result in the ERAB being passed later than planned, in approximately quarter one of 2026. However, Option 2 will give you the opportunity to conduct a better policy process, including impact analysis and stakeholder consultation, which could give you further insights into employers' and employees' views on the current obligations. This information could highlight trade-offs, fill any unknown information gaps we may have and inform your decision making, and is considered good practice.

15. A detailed timeline, comparing Option 1, 2A and 2B is provided in Annex One.

Option 1: Instruct MBIE to draft a Cabinet paper which seeks decisions to repeal employers' obligations at the start of employment

16. Three sub-options exist if you wish to repeal the employer obligations:

Option 1A: Remove the 30 day rule

17. What would change: This would be a 'least change' option targeting just the 'core' requirement that if an employer has a CEA in place that covers the work of the employee, for the first 30 days of their employment, an employee's IEA reflects the terms of the CEA that would bind the employee, if the employee were a member of the union.

18. This would mean an employee who does not wish to be part of a union could negotiate their terms and conditions as an IEA with the employer from the start.

19. What stays the same: Disclosure and decision reporting requirements would remain. The employer would still be required to provide an active choice form to the new employee, along with a list of unions with CEAs that cover the employee's role, within 10 days of the employee's employment. Through the active choice form the employee would indicate whether they want to join a union or not. If the employee wishes to join a union, the employer must provide their contact details to the union of their choice, and the employee's terms and conditions would become those of the CEA instead of their IEA.

20. Alternatively, if the employee chooses not to join a union, they can also indicate this on the form and they can indicate that they do not want this form passed on to the unions that cover their work. An employee may still join a union and move onto the CEA at any time (including after the 30 days) if they wish.

21. The employer would still need to inform the employee:

- that a CEA exists and covers the work to be done by the employee; and
- that the employee may join a union that is a party to the CEA; and
- about how to contact the union; and
- that, if the employee joins the union, the CEA will bind the employee.

22. Unions would retain the ability to specify the information that is provided to the employee and the form in which it is provided.

Option 1B: Remove the 30 day rule and revert the disclosure and reporting requirements to the 2015 obligations

23. What would change: The employer would no longer have to:
    - place a new employee who is not a part of a union on the terms of a CEA (or no less favourable terms) for the first 30 days; nor
    - provide the active choice form, along with a list of unions with CEAs that cover their work, to the employee.

24. Unions could no longer specify the information that is provided to the employee and the form in which it is provided.

25. What stays the same: Minimum disclosure and reporting requirements would still exist, and the employer would need to inform an employee:
    - that a CEA exists and covers the work to be done by the employee; and
    - that the employee may join a union that is a party to the CEA; and
    - about how to contact the union; and
    - that, if the employee joins the union, the CEA will bind the employee.

26. The employer must also give the employee a copy of the CEA; and if the employee agrees, inform the union as soon as practicable that the employee has entered into the IEA with the employer.

Option 1C: Remove the 30 day rule and all specific disclosure and reporting requirements

27. What would change: This option removes the 30 day rule and all the disclosure and reporting obligations. The employer would not have to provide any information regarding unions or the CEA to the employee. This option goes further (in terms of removing disclosure and reporting requirements) than in the 2015-2019 time period.

28. There is a chance that (despite the repeal) the Employment Relations Authority or the Employment Court could read the general obligation of good faith as requiring an employer to provide a CEA as an alternative option to the IEA, to facilitate an informed decision by the employee. Thus, this option would require a further amendment to the Act to put beyond doubt that the employer is still acting in good faith even if they do not provide the CEA to the employee.

29. Unions could no longer specify the information that is provided to the employee and the form in which it is provided.

Option 2: Receive further advice on employers' obligations at the start of employment and options for change

30. Should you choose this option, we will prepare advice examining how to best achieve your objective(s). The advice will be informed by stakeholder consultation – the recently published Cabinet Office Circular *Impact Analysis Requirements* states that "Consultation with external stakeholders and the public is a key element of a good impact analysis process".[8]

31. We expect our advice would cover:

    a. any further information we gather to fill our current knowledge gaps, for example on:

        - how the active choice form plays out now for employers
        - whether employers have derived any benefit (in terms of regulatory clarity) from the more prescriptive requirements put in place in 2019 (compared to the more general, outcome-based requirements that existed from 2000 to 2015)
        - the potential impact of reducing the disclosure and reporting requirements.

    b. the expected impact of the sub-options on employers (small and large), employees (including those new to employment, migrants and young employees), unions and government.

    c. whether any non-regulatory options exist which may to achieve your objective(s), and

    d. costs and benefits of the options.

32. As part of the further advice, we can also consider whether any options have a greater chance of achieving durability. The 30 day rule has been repealed and reinstated by different Governments, which can create confusion for employers and employees.

33. You have two options for stakeholder consultation, each with a slightly different timeline.

Option 2A: Minimal stakeholder consultation

34. Officials will actively contact a limited selection of stakeholders that could be directly affected, and seek their perspectives if they are able to engage in the narrow window available.

35. This option would not fit within the current ERAB timeline (see Annex Two). This option will enable Cabinet policy decisions on 4 June and introduction of the Bill on 19 August, which would result in it being passed in approximately **late February 2026**.

Option 2B: Moderate consultation

36. Officials will meet with more stakeholders that could be affected to understand their perspectives. Moderate stakeholder consultation would allow officials will engage with a larger number of stakeholders which would allow for more in-depth advice on the trade-offs that exist. This option may also lead to greater buy-in from stakeholders, as they are involved earlier in the policy process.

37. This approach is like the one taken for personal grievance advice in 2024. This option will enable Cabinet policy decisions on 21 July and introduction of the Bill on 23 September, which would result in it being passed in approximately **late March 2026**.

We ruled out other timing options

38. We considered but discarded an option of full public consultation, as while it is considered best practice, this would add at least 6 months to the timeline and thus would likely mean

[8] Cabinet Office Circular CO (24) 7: *Impact Analysis Requirements*, 16 December 2024, see para 2.1 and 22

your stated goal of passing the Bill this term would not be achieved. However, we can provide more detail on this option if you wish.

39. There are other timing options, such as inserting these changes during the Committee of the Whole House stage of the ERAB, but this would not allow for public consultation during the Select Committee stage and as such, we do not recommend these.

Option 3: Stop work on repealing the 30 day rule and interrelated provisions

40. Should you decide that you do not wish to proceed with the repeal of the 30 day rule and/or related provisions at this time, MBIE will do no further work.

Interactions with other legal obligations

90 days trials

41. 90 day trial provisions can only be included in IEAs (not CEAs). An employer and a new employee, to whom the 30 day rule applies, could agree to include a trial provision in addition to the terms and conditions contained in the CEA. However, in practice this is likely to be "less favourable" to the employee because of the effect of the trial period provision.

42. This means that it is only possible to put such a new employee on a trial period in accordance with the ER Act, if doing so is no less favourable than the terms and conditions in the CEA. For this to be so, the CEA would have to contemplate trial periods being applied to new employees or be completely silent on continuity of employment and protection from unjustified dismissal.. Thus, practically, due to the 30-day rule, an employer is currently unlikely to be able to use a 90-day trial if there is a CEA in place.

International obligations

43. Officials consider that none of the options are likely to be seen as inconsistent with the International Labour Organisation (ILO)'s Right to Organise and Collective Bargaining Convention, which requires appropriate measures to encourage and promote voluntary negotiations. However, there is some uncertainty with this assessment as no analogous cases have previously been considered by the ILO Committee on Freedom of Association. No complaint was raised when the 30 day rule was repealed previously.

44. MFAT does not consider that repealing the 30 day rule would be inconsistent with New Zealand's trade obligations.

Next Steps

45. Following or ahead of your decision, we would like to discuss this topic with you, to hear what your objective is with this work, so we can tailor the next stages to that objective.

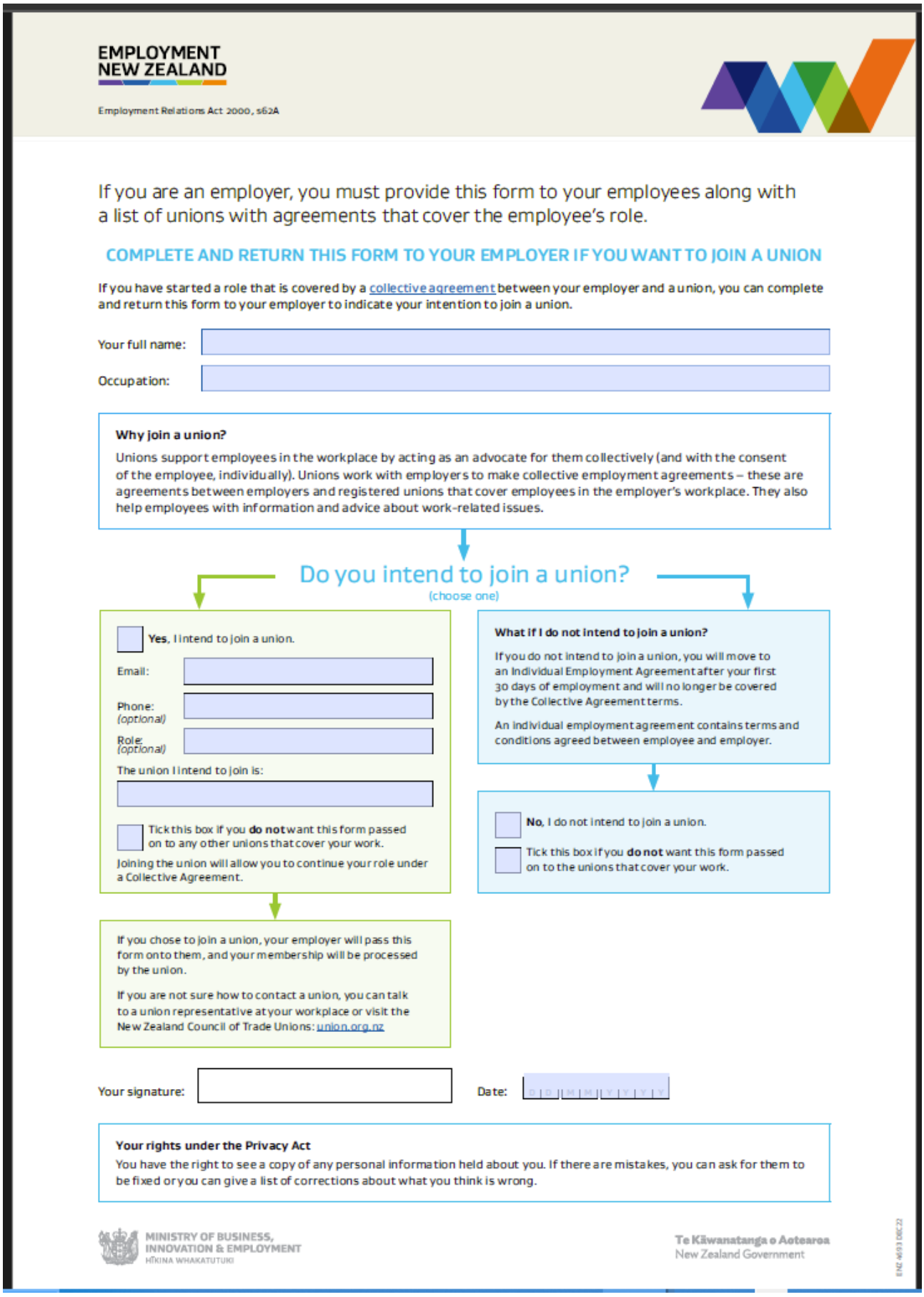
46. If you choose one of the variants of Option 1, we will provide you a draft Cabinet paper and Regulatory Impact Statement by 6 March. If you choose Option 2A we will provide you with advice on 20 March. If you choose Option 2B, we will provide you with advice on 17 April. Under either option, we'll discuss with your office which stakeholders we should approach.

Annexes

Annex One: Active choice form

Annex Two: Timeline for no further consultation, minimal consultation and targeted consultation

Annex One: Active Choice Form



EMPLOYMENT NEW ZEALAND

Employment Relations Act 2000, s62A

If you are an employer, you must provide this form to your employees along with a list of unions with agreements that cover the employee's role.

COMPLETE AND RETURN THIS FORM TO YOUR EMPLOYER IF YOU WANT TO JOIN A UNION

If you have started a role that is covered by a collective agreement between your employer and a union, you can complete and return this form to your employer to indicate your intention to join a union.

Your full name:

Occupation:

Why join a union?

Unions support employees in the workplace by acting as an advocate for them collectively (and with the consent of the employee, individually). Unions work with employers to make collective employment agreements – these are agreements between employers and registered unions that cover employees in the employer's workplace. They also help employees with information and advice about work-related issues.

Do you intend to join a union?

(choose one)

☐ **Yes**, I intend to join a union.

Email:

Phone: *(optional)*

Role: *(optional)*

The union I intend to join is:

☐ Tick this box if you **do not** want this form passed on to any other unions that cover your work.

Joining the union will allow you to continue your role under a Collective Agreement.

If you chose to join a union, your employer will pass this form onto them, and your membership will be processed by the union.

If you are not sure how to contact a union, you can talk to a union representative at your workplace or visit the New Zealand Council of Trade Unions: union.org.nz

What if I do not intend to join a union?

If you do not intend to join a union, you will move to an Individual Employment Agreement after your first 30 days of employment and will no longer be covered by the Collective Agreement terms.

An individual employment agreement contains terms and conditions agreed between employee and employer.

☐ **No**, I do not intend to join a union.

☐ Tick this box if you **do not** want this form passed on to the unions that cover your work.

Your signature:

Date: D D / M M / Y Y Y Y

Your rights under the Privacy Act

You have the right to see a copy of any personal information held about you. If there are mistakes, you can ask for them to be fixed or you can give a list of corrections about what you think is wrong.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

ENZ 4693 DEC22

Annex Two: Timelines for no further consultation, minimal consultation and moderate consultation

Step	Option 1: No further advice	Option 2: Minimal consultation	Option 2: Moderate consultation
Minister's decision on the initial advice	7 February	7 February	7 February
Policy analysis, consultation, draft further advice	N/A	10 February – 20 March (6 weeks)	10 February – 17 April (10 weeks)
Further advice sent to Minister's office	N/A	20 March	17 April
Minister's decision on the further advice	N/A	28 March	29 April
MBIE drafting Cabinet paper and agency consultation Draft RIS and peer review of the RIS	3 February – 6 March (5 weeks)	31 March – 8 May (6 weeks)	30 April – 5 June (6 weeks)
Draft Cabinet paper sent to Minister's office RIS Panel assesses RIS	6 March	8 May	5 June
Ministerial consultation (2 weeks)	10 March – 21 March	12 May – 23 May	9 June – 19 June
Finalised Cabinet paper and RIS to Minister's office	Monday 24 March	Monday 26 May	Monday 23 June
Cabinet Economic Policy Committee	2 April	4 June	16 July
Cabinet	**7 April**	**9 June**	**21 July**
PCO drafting (5 weeks)	Confidential advice to Government	9 June – 11 July	21 July – 22 August
Near-final draft sent to Ministry of Justice for BORA vet (2 weeks)		14 July	25 August – 5 September
Cabinet Legislation Committee		13 August	17 September
Cabinet		18 August	22 September
Introduction		**19 August**	**23 September**
First Reading		25 August	29 September
Select Committee report back (4 months)		Late December 2026 (est)	Late January 2026 (est)
Bill passed (2 months)	**December 2025 (est)**	**Late February 2026 (est)**	**Late March 2026 (est)**