

Reference: 20220339

13 September 2022

Dear [REDACTED]

Thank you for your Official Information Act (OIA) request, received on 16 August 2022. You requested the following:

All other written advice, recommendations, reports and information (not released to me via the attached PDF) Treasury has provided any Government Minister regarding Fair Pay Agreements since 1 January 2021.

Information being released

Please find enclosed the following document:

Date	Document Description	Decision
11 March 2022	Treasury Report: Briefing for Cabinet Economic Development Committee 16 March 2022	Released in part

I have decided to release the relevant parts of the document listed above, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

In making my decision, I have considered the public interest considerations in section 9(1) of the OIA.

Please note that this letter (with your personal details removed) and enclosed document may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Thomas Parry
Manager, Communities, Learning and Work

Treasury Report: Briefing for Cabinet Economic Development Committee 16 March 2022

Fair Pay Agreements: Backstop Where One Side is Not Represented

Hon Michael Wood, Minister for Workplace Relations and Safety

Treasury contact: Ahmer Ranjha s9(2)(k)

Sign out contact: Thomas Parry s9(2)(k)

Description:

This paper seeks agreement to add a backstop function to the Fair Pay Agreement (FPA) system if one side is not represented in bargaining. This will allow an FPA to be fixed by the Employment Relations Authority (the Authority) when there is no willing and suitable representative on one side.

Comments:

The need for this change arose because BusinessNZ is no longer willing to be the default representative for employers. The backstop function is necessary to ensure an FPA can progress if a party is unable or unwilling to engage in negotiations. When an FPA goes to backstop determination, unrepresented parties will not be able to provide direct input to the Authority's determination and will not be able to appeal a determination. These measures aim to disincentivise non-participation in bargaining.

However, based on its own supplemental impact analysis, MBIE does not currently expect the terms of a bargained outcome to differ from an outcome fixed through the backstop function. As such, the proposed new function may not be effective in disincentivising non-participation by employers. The implications of this change will be clearer once the system goes live.

MBIE expects 50 per cent of FPAs initiated to go to backstop determination. If this proportion is greater, it could undermine the intention for FPAs to primarily be bargained. MBIE will monitor and evaluate the FPA system once it is live. This will provide a good opportunity to see how many FPAs are determined through the backstop function and analyse if the system is achieving its intended objectives.

Treasury Recommendation: Support.

Fiscal Implications:

s9(2)(f)(iv)

s9(2)(f)(iv)

This funding is being sought through Budget 2022 as part of a Budget bid that also seeks funding for two additional FPA functions (coverage determinations and enforcing regional differences).

If more than 50 per cent of FPAs are determined through backstop determination, fiscal costs will be higher as an outcome from backstop determination has higher associated administrative costs compared to a bargained outcome.