

Te Kawa Mataaho Report



Te Kawa Mataaho
Public Service Commission



Advice on union proposal to pause bargaining, sector-wide, until 31 August 2022

Date: 15 July 2022 **Security Level:** SENSITIVE

Report No: 2022/0153

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	Actions Sought	Due Date
Hon Chris Hipkins, Minister for the Public Service	Advise your preferred approach to the unions' proposal to pause bargaining	18 July 2022

Choose an item.

Enclosure: Yes

Executive Summary

- 1 This report provides advice and options to the Minister in response to a proposal by the New Zealand Council of Trade Unions' (NZCTU) to pause current collective bargaining activity, sector-wide, until 31 August 2022 while an adjustment to public sector pay is sought.
- 2 The unions' proposal seeks to secure Government's pre-commitment to bargaining outcomes, superseding the existing process developed in response to the original public sector pay proposal. NZCTU's proposal sets the scope as including the funded and contracted sectors, settled collective agreements, and draws private employers into the conversation.
- 3 The pre-commitment sought by unions has significant cost implications based on early modelling, and the potential for even greater cost impacts that are not yet known. The more of these types of early commitments, or the wider ranging any individual commitment is, the less flexibility remains available to Ministers to bargain on issues subsequently.

Recommended Action

We recommend that you:

- 4 **Agree** to Te Kawa Mataaho responding to the unions' proposal to pause bargaining activity underway across the public sector. This response could take the following forms:

- i. **Decline** the unions' proposal and reiterate Government's expectation that all parties, including unions, continue to bargain in good faith in line with the agreed process.

Decline/do not decline.

OR

- ii. **Defer** the unions' proposal, either to:
 - a. When the issue is scheduled to be considered, at which time Ministers will be provided with further advice.

Defer in this way/do not defer in this way.

OR

- b. Seek to come to some agreement with unions that allows bargaining to continue while providing the union with a set of principles that given them confidence their members will not be disadvantaged through the process

Defer to this point/not defer to this point.

OR

- iii. **Agree** to the unions' proposal, noting the risks and potential cost implications attached to this decision and detailed further within this advice.

Agree/disagree.

- 5 **Note** officials will work with your office and Treasury next week on regular subject matter briefings throughout remaining bargaining and setting a timeframe for Cabinet considering the pay proposal's feasibility and parameters for next stages.

Noted.

- 6 **Refer** this report to the Minister of Finance for his information.

Refer/not referred.

- 7 **Agree** that this briefing is not published due to its impact on public sector bargaining.

Agree/disagree.

Hon Chris Hipkins

Minister for the Public Service

Te Kawa Mataaho Report: Advice on union proposal to pause bargaining, sector-wide, until 31 August 2022

Union proposal to pause current bargaining, sector-wide, until 31 August 2022

- 8 The NZCTU's proposal was originally put forward on the understanding the union, and its affiliates, would continue to engage in existing bargaining activities as normal. The NZCTU has now changed its position stating they will not ratify existing terms of settlement or progress business-as-usual bargaining activity until their pay adjustment proposal is settled (see **Appendix 1**).
- 9 There is significant bargaining activity beyond the NZCTU's coverage that continues and will do so regardless of the outcome of its pay adjustment proposal. For example, significant bargaining activity is underway in the health sector and Fire and Emergency New Zealand with non-NZCTU unions. In addition, Te Kawa Mataaho is regularly receiving reports from agencies across the public sector expressing a desire to proceed in earnest and resolve the extensive range of issues beyond rates of pay that bargaining resolves.
- 10 While there is significant impetus for exploring the pay adjustment proposal put forward by the NZCTU, including concerns regarding the cost of living, and there is need to move at pace to resolve these issues, pre-empting a robust bargaining process could prejudice outcomes and undermine the benefits that could be achieved.

Analysis

Pre-commitment

- 11 This proposal has the effect of providing for increased pre-commitment to outcomes; prior to an opportunity having been provided to explore, or advise, on those implications. The proposal has the effect of:
 - a. Strengthening the expectation that the proposal covers the funded and contracted sector by pausing the bargaining for the process to run in those sectors.
 - b. Establishing a strong expectation that the pay proposal applies on top of any recent settlement.
 - c. Continuing to bargain for non-remuneration related items; even if there is significant cost associated with those items.
 - d. Restricting agencies' ability to respond to staff in individual employment agreements (noting that most public service agencies run a remuneration round process for 1 July; potentially meaning all remuneration rounds, even for non-union members, may need to stop).
- 12 This front loading of commitments narrows the scope Ministers will have to disagree to part or all of the terms claimed by the NZCTU. It starts to lock in the most expensive model proposed by the NZCTU ahead of fully understanding what the union is seeking or the fiscal or other consequences of that claim.
- 13 The proposal also means that key communications on the impact of the claim will be provided by the NZCTU without employer input. There is no guarantee all employers will agree to the proposal, leading to dispute in the short term, and then backpay claims by the union if delay occurs.

Good faith bargaining

- 14 The Government Workforce Policy Statement provides guidance, and sets expectations, for public sector agencies to foster a consistent, efficient, and effective approach to negotiating employment agreements and the management of employment relations across the sector.
- 15 Bringing forward commitment, without the benefit of the accompanying scoping and analysis, could be seen to be contradicting the position adopted in the Minister's public statement of 13 June 2022 that the "*Government is interested in exploring with public sector unions a pay adjustment proposal*".
- 16 9(2)(h) legal privilege
[REDACTED]
- 17 9(2)(j) prejudice to negotiations
[REDACTED]
- 18 Te Kawa Mataaho is already receiving reports from public sector agencies of union delegates advising of various views that share a common theme of (i) a pay rate increase is guaranteed, and (ii) current bargaining is already suspending pending the finalisation of the NZCTU's engagement with Government (**Appendix 2** provide further detail of the bargaining landscape). Examples include:

9(2)(j) prejudice to negotiations
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Outstanding scoping issues

- 19 While the extent of coverage is ill-defined, officials have been prioritising developing a shared methodology for defining the workforces and collective agreements intended to be covered by the pay adjustment proposal.
- 20 However, it is noteworthy that in early discussions with the NZCTU (on 8 July 2022) the union advised it does not yet know the scale of the workforces it intended to be covered and assumed and expects Te Kawa Mataaho to provide a database of all possible workforces that could be covered (including the "funded sector" and "contracted sector"). Joint work is underway on this, but more time is necessary to set these parameters.
- 21 The unions appear to have a limited understanding of the mechanisms for implementing any such pay rate adjustment, including the limitations on mechanisms for prescribing pay rates across the public sector. In addition, the unions do not appear to appreciate that, where depending on the nature of who, or which entity, is deemed the 'employer', any such pay rate adjustment can only be obtained through mutual agreement with that employer rather than a Minister or Te Kawa Mataaho.

- 22 It remains unclear how many and which affiliates, or workforces covered by existing collective agreements, are supportive of the pay adjustment proposal. This limits the accuracy of existing modelling. This data is planned to be requested on 18 July 2022.
- 23 From the NZCTU's most recent correspondence, there appears to be some confusion and concern amongst its stakeholders about how its pay adjustment proposal will proceed.
- 24 While the proposed pausing of existing bargaining activity would resolve this concern within the NZCTU's affiliate and stakeholder network, this would disproportionately favour union interest at the expense of other parties' interests. Pausing existing bargaining activity – without consulting all affected parties – risks opportunity cost through lost momentum, disruption, and confusion across the sector.

Cost implications

- 25 You will recall from our recent update on 8 July 2022, the NZCTU has indicated an unwillingness to discuss the effect of built-in increases (or progression) on any proposal, and how equitable outcomes could be achieved across different pay structures. The NZCTU indicated an expectation that any rate of pay adjustment agreed would be in addition to existing contractual entitlements, including allowances. This is a particularly crucial issue for several reasons:
 - a. Engagement on this issue by the NZCTU is necessary to properly scope, and cost, the pay adjustment proposal it is putting forward. This clarity of scope is necessary to effectively bargain on the issue.
 - b. While the potential upper range of this costing cannot yet be properly defined, initial modelling provided to Ministers in June [refer 2022/0116, T2022/1279] indicates additional costs of 9(2)(f)(iv) confidentiality of advice if progression was to be in addition to an agreed adjustment to pay rates secured by the NZCTU.
 - c. The NZCTU's statement appears to dismiss consideration of one option for progressing bargaining and, if tacitly endorsed by adopting their most recent proposal to pause wider collective bargaining, further reduces the scope for Ministers to balance the rising cost of living pressures with the fiscal constraints faced by Government in a COVID-19 recovery context.

Engagement on this issue

- 26 The NZCTU wishes to discuss this issue at the next scheduled meeting, Monday 18 July 2022.
- 27 We are seeking Ministers' views on whether we should:
 - i. **Decline** the unions' proposal and reiterate Government's expectation that all parties, including unions, continue to bargain in good faith in line with agreed process.
 - ii. **Defer** the unions' proposal, either to:
 - c. When the issue is scheduled to be considered, at which time Ministers will be provided with further advice. Noting, this is unlikely to dissuade unions from continuing to advise agencies they are pausing bargaining until the pay proposal is resolved.

- d. Seek to come to some agreement with unions that allows bargaining to continue while providing the union with a set of principles that given them confidence their members will not be disadvantaged following the resolution of the pay proposal bargaining process. Noting, we anticipate significant work will be needed to establish that agreement on what disadvantage means and for whom.
- 8 **Agree** to the unions' proposal, noting the risks and potential cost implications attached to this decision and detailed further within this advice.

Next Steps and Communications

- 28 The NZCTU has indicated it intends to circulate a communication to its affiliates to the effect of Mr Wagstaff's email to Te Kawa Mataaho.
- 29 Te Kawa Mataaho has engaged with public sector agencies to provide consistent messaging and reassurance of the ongoing engagement with the NZCTU regarding its pay adjustment proposal.
- 30 Depending on the Minister's view, Te Kawa Mataaho will respond to the NZCTU and proceed with exploring and scoping the pay proposal ahead of substantive bargaining rounds in coming weeks.
- 31 Next week we will work with your office and Treasury to agree a timeframe for regular subject matter briefings between now and the last day of scheduled bargaining. We will also work with these parties to establish a process and timeframe for seeking Cabinet's consideration of the feasibility of the NZCTU's proposal and, if agreed to, parameters for the next stages of discussion.

Appendix 1 – NZCTU correspondence proposing pause of existing bargaining activity, sector-wide

On Friday 15 July 2022, Richard Wagstaff sent the below email to Te Kawa Mataaho officials

....

I can confirm that the unions are not prepared to advance any of the collective bargaining listed [below] (this list is not exhaustive) , until our discussion on Monday has taken place.

We have had an opportunity to consider some guidance, and the following is suggested as a basis, subject to our discussion:

General

The parties recognise that the negotiation of a Public Sector Pay Adjustment (PSPA) has the potential to significantly affect current processes of negotiation and ratification. We agree that no union members will be disadvantaged in the process or outcome of their current bargaining if and when a PSPA is negotiated.

Principles:

In order to achieve this, the following Principles have been agreed to guide organisations and unions who have bargaining in place:

- 1. The parties will adjourn bargaining for a pay adjustment until 31 August, or agree that they will apply a PSPA over and above any settlement they make.*
- 2. The parties can by mutual agreement, continue to advance other aspects of the CA bargaining.*
- 3. The parties will not extend any advantage to staff who are not covered by the PSPA, but who are otherwise within the coverage of the CA in question, without the agreement of the union.*
- 4. The parties agree that there will be no disadvantage in process or outcome for members in applying these principles if the PSPA does not eventuate.*
- 5. The parties agree to develop a joint communication to union members affected by the adoption of these principles.*

Variation:

The above principles and commitments can be varied by mutual agreement.

The CTU had previously indicated that the following organisations (and probably more) are relevant to this discussion:

- | | |
|----------------------------|----------------------------------|
| ○ Oranga Tamariki | ○ Aviation Security |
| ○ Ministry of Justice | ○ LandCare Research |
| ○ Community Corrections | ○ GNS |
| ○ Statistics NZ | ○ Parliamentary Services |
| ○ MoE | ○ Ministry of Transport |
| ○ Min Culture and Heritage | ○ COMPASS/OCS employed by HNZ |
| ○ DIA | ○ School Cleaners and Caretakers |
| ○ AgResearch | |

Appendix 2 – Environmental scan of current bargaining activity status across public sector entities

- 1 Te Kawa Mataaho monitors the status of collective bargaining in the Public Service, and for select collective agreements in the wider public sector, in particular, at Non-Public Service departments, in the health sector, and in the education sector.

Current and upcoming public sector bargaining

- 2 Of agreements monitored by Te Kawa Mataaho as of 15 July 2022:

- A. Nine collective agreements (6,500 FTE) in the Public Service, and a further 12 collective agreements (17,200 FTE) in the wider public sector are initiated for bargaining but have not commenced bargaining. 9(2)(j) prejudice to negotiations

- B. Nine collective agreements (10,500 FTE) in the Public Service, and a further 19 collective agreements (55,700 FTE) in the wider public sector are currently bargaining. 9(2)(j) prejudice to negotiations


- C. Three collective agreements (4,600 FTE) in the Public Service, and a further 14 collective agreements (40,100 FTE) in the wider public sector are currently settled, and not yet initiated for bargaining, but have expiry dates before the end of 2022. 9(2)(j) prejudice to negotiations

Nominated agencies

- 3 In his email of 15 July, Mr Wagstaff states that “We are aware that the following organisations (and probably more) are relevant to this discussion”. Following this, 15 agencies and workforces are listed from across public service departments, Crown entities, the wider public sector, and one contracted employer.

- 4 We know from comments made to at least one other public service department, 9(2)(f)(iv) confidentiality of advice that the intent is for proposed delays to bargaining to extend beyond this list, however, for the purpose of providing greater detail (where available) for those agencies and workforces named we have prepared Table 1 below:

9(2)(j) prejudice to negotiations



9(2)(j) prejudice to negotiations

