



**Te Kawa Mataaho Report: PSPA key issues [week of 31 October 2022]**

**Date:** 1 November 2022 **Security Level:** IN CONFIDENCE

**Report No:** 2022/0252

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	<b>Actions Sought</b>	<b>Due Date</b>
<b>Rt Hon Jacinda Ardern, Prime Minister</b>	<b>Note</b>	<b>2 November 2022</b>
<b>Hon Grant Robertson, Minister of Finance</b>	<b>Note</b>	<b>2 November 2022</b>
<b>Hon Chris Hipkins, Minister for the Public Service</b>	<b>Note</b>	<b>2 November 2022</b>
<b>Hon Andrew Little, Minister of Health</b>	<b>Note</b>	<b>2 November 2022</b>

Enclosure: No

**Minister's Office Comments**

<b>Comments:</b>	
<b>Date returned to Te Kawa Mataaho:</b>	

## Executive Summary

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1. You are meeting at 9:30am on Wednesday 2 November to discuss the Public Sector Pay Adjustment (PSPA). This report draws the following to your attention:
  - a. **Context:** as expected the PSPA is a multi-pronged and fast-moving process. Officials are now looking ahead and planning a process to ensure that the separate negotiations all land within the agreed fiscal and strategic parameters; further advice will be provided on this next week.
  - b. **Crown agents** are considering their position on the PSPA and are mindful of affordability (particularly where they operate cost-recovery). Officials are providing guidance and are strongly of the view that all agencies, including Crown agents, need to reprioritise within baselines before seeking additional funding.
  - c. **Recently settled collective agreements:** our view remains that those on recently settled agreements that have opted into the PSPA process will be offered the better of the two deals in the sense that remuneration will be 'topped-up' to be in line with a PSPA.
  - d. **Backdating** is being sought by unions in the Public Service. We intend to advise negotiators not to formally amend the effective dates of increases at this time, but it may be important to signal if there is a willingness to consider an earlier effective date for increases.
  - e. The fit between **pay progression and the PSPA** remains a live issue and further clarity will be needed shortly. Different sectors will need different approaches.
  - f. There is not an easy fit between the **union preference provisions** of the Employment Relations Act (ERA) and common practice, and we are continuing to explore this with our legal advisors in anticipation of it becoming a key issue in bargaining.
  - g. That we are working with the **Public Service Association (PSA)** to clarify the impact on its existing bargaining of the PSPA process.

## Recommended Action

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We recommend that you:

- a **note** that PSPA bargaining has begun in Education and the Public Service, initial meetings have occurred in Health and Police, but not yet for Defence or Crown agents, and in the Education and Public Service sectors initial offers are currently being considered by some relevant unions.
- b **note** that officials are mapping the individual pressure points for the various bargaining processes, and supporting those processes to remain within the fiscal envelope, and be within common strategic settings; and that advice on this trajectory will be provided in the week of 7 November 2022.
- c **note** Te Kawa Mataaho (the Commission) and Treasury are actively advising Crown agents on the approach to funding their PSPA settlements.

- d **note** Crown agents must reprioritise within baselines before seeking any additional funding from the contingency for the total outlay on PSPA settlements to remain within the fiscal envelope.
- e **note** that we intend to advise bargaining leads that they can advise union leads that the terms of the PSPA within sectors will be extended to those on recently settled collective agreements and individual employment agreements where the PSPA terms are more generous.
- f **note** that we intend to advise bargaining and union leads that the terms of the PSPA will apply to collective agreements that settle while PSPA bargaining is underway, where the PSPA terms are more generous.
- g 9(2)(j) prejudice to negotiations
- h **note** that we will provide advice in the week of 14 November on 9(2)(j) prejudice to negotiations
- i **note** that sectors vary in how the PSPA and pay progression interact and that we do not recommend a uniform approach to this issue.
- j **note** that the public service is likely to want clarity on the PSPA pay progression issue soon and that we will keep you apprised of discussions.
- k **note** that discussion is ongoing with legal advisors on the options and mitigations in respect of whether and how a union-only benefit should, and could, be accorded.
- l **note** that this briefing be released, in line with other PSPA papers and subject to any necessary redactions, following the implementation of PSPA negotiated settlements.

Rt Hon Jacinda Ardern  
**Prime Minister**

Hon Grant Robertson  
**Minister of Finance**

Hon Chris Hipkins  
**Minister for the Public Service**

Hon Andrew Little  
**Minister of Health**

## **Te Kawa Mataaho Report: PSPA key issues [week of 31 October 2022]**

### **Purpose of Report**

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2. This is the first of a series of reports on the PSPA process where we raise awareness of key issues with you, seek clarity, and otherwise advise on detail of emerging matters. As signalled in the weekly PSPA Progress Report to the Minister for the Public Service sent on 28 October 2022 [2022/0248 refers] this report:
  - a. Sets out context and signals work to come to bring the multi-pronged process together within agreed parameters
  - b. Comments on Crown agent-specific issues (e.g., managing PSPA funding for different funding models)
  - c. Comments on the application to recently settled collectives, backdating PSPA pay adjustments and treatment of pay progression as these issues are now coming through in negotiations
  - d. Advises you of current legal advice on the union preference provisions of the Employment Relations Act 2000.
  - e. Notes recent discussions with the Public Service Association.

### **Context**

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3. The PSPA is a novel approach to collective bargaining and is following a carefully designed process to align bargaining with the requirements of the Employment Relations Act 2000.
4. The process is well underway:
  - a. Education, Health, Police and Public Service sectors have now started meeting with their respective unions that have opted into the PSPA process
  - b. Initial offers have been made in the Education and Public Service sectors.
5. The process means there are now multiple negotiations running at differing speeds. There are also some unions still considering whether to opt-in and others testing the boundaries of what it means to be in the process.
6. While expected, the challenge for officials, and ultimately for Ministers, will be to ensure these multiple, separate, dynamic processes:
  - a. Remain, in total, within the fiscal envelope set by Cabinet
  - b. Remain aligned with the long-term strategic direction
  - c. Do not inadvertently give rise to unintended precedents either within the PSPA process or over the longer term.
7. Officials from the Treasury and Commission are mapping the individual bargaining processes and will provide advice in the week beginning 7 November 2022 on how the matters listed above will be

## Crown agent-specific issues

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8. Ministers are advised that Crown agents are actively considering whether to opt into the PSPA process over the next few weeks. As this process unfolds, the Crown agents are, understandably, seeking reassurance on the availability of funding to cover any shortfall between their baselines (and existing remuneration commitments) and potential PSPA settlements. This is particularly an issue for Crown agents largely funded through cost recovery arrangements such as fee and levy-based charges.
9. Boards that do not have sufficient provisions in their baselines to meet PSPA settlement costs may be reluctant to enter negotiations without first securing additional funding. Yet providing such funding at the outset reduces incentives to reprioritise and, if widespread, could result in costs exceeding the PSPA fiscal envelope. Treasury officials are doing further analysis to better understand where these situations may arise (i.e., the potential scale) and an approach for responding to Crown agents where relevant.
10. We will continue to provide advice to Crown agents in respect of their funding for settlements, including particular considerations given the impact of their funding base and balancing PSPA costs in the short-term against the cycle of fee and levy reviews (enabling cost recovery).
11. Chief executives of each public service department acting as a Crown agent monitoring agency have been kept apprised of this issue and advice provided by the Treasury and Commission about how the interface between PSPA bargaining and Budget 23 process will be managed for this cohort.

## PSPA: coverage and content

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12. Ministers are advised that, in their initial reactions to offers, unions have asked about the relationship between the PSPA and recently settled collectives, whether the PSPA will be backdated, and whether a PSPA settlement will be paid in addition to existing pay progression. These are not new issues and the advice that we intend to provide to negotiators is as follows.

### *PSPA and recently settled collectives*

13. Consistent with the ERA, Cabinet noted that the PSPA should be offered broadly [CAB-22-MIN-0431 revised, item 4 refers] and all unions, irrespective of New Zealand Council of Trade Unions' (NZCTU) affiliation, have been invited to be part of the process. Terms of any collective settlements are intended to also flow through to those on Individual Employment Agreements. This broad approach includes covering those that are on recently settled collective agreements.

14. 9(2)(j) prejudice to negotiations

15. 9(2)(j) prejudice to negotiations

9(2)(j) prejudice to negotiations

16. It is useful to note that:

- a. Non-remuneration items may become more prominent in PSPA bargaining as unions seek firm commitments or, at a minimum, firm work programmes on non-remuneration items that align with agreements in recently settled collectives.
- b. Fiscal modelling to date has taken this 'top-up' approach into account

*Backdating*

17. Throughout the process to date with the NZCTU and now that formal bargaining is underway in the separate sectors, unions are seeking to have any settlement backdated (to 1 July 2022).

18. The current offers are aligned to the Education offer to teachers and provide for an increase on settlement and a second increase 12 months later. This is not an unusual position in public sector bargaining, and back dating pay increases is not common in the public service. This stance on backdating is reinforced in the Government Workforce Policy Statement. It is important though, that all unions have an opportunity to commence and conclude bargaining as soon as possible.

19. 9(2)(j) prejudice to negotiations

20. 9(2)(j) prejudice to negotiations

21. We intend to advise negotiators 9(2)(j) prejudice to negotiations while bargaining is still commencing in some sectors, but it may be important to signal that there is a willingness to consider 9(2)(j) prejudice to negotiations

22. A common effective date increases the chances of common expiry dates. 9(2)(j) prejudice to negotiations

Advice on terms and expiry dates will be provided within a fortnight.

*Pay progression*

23. Unions are seeking PSPA settlements to be in addition to already agreed salary movements (i.e., contractual progression). We do not recommend this approach being taken uniformly as the impacts are different in different sectors. This is a particularly sensitive issue for the Public Service which operates within pay bands. In contrast Health and Education have 'pay spines' with accumulation at the top.


24. The PSA is seeking confirmation on behalf of the Public Service that progression will apply as normal with any PSPA increase applying to base rates. As previously advised, this impacts on overall cost.
25. At present negotiators are not focussing on the issue of progression. However, we anticipate that the public service and potentially Crown agents will require clarity soon. The offer made to Education and the Public Service assumes changed base rates with progression on top.
26. You may wish to discuss the current state of play and provide feedback to officials on conceding in bargaining that any agreed PSPA will apply on top of progression.

### **Current legal advice on union-only benefit**


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27. As part of the PSPA, the NZCTU continues to seek a benefit for members of its affiliates over members of non-affiliated unions.


28. 9(2)(j) prejudice to negotiations



29. 9(2)(j) prejudice to negotiations



30. The legal advice is 9(2)(h) legal privilege



a. 9(2)(h) legal privilege



b.

c. have very clear wording to align with the purposes of the Employment Relations Act 2000.

31. 9(2)(h) legal privilege



32. We are continuing to test options and mitigations with our legal advisors.

### **Agency level bargaining**

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33. Discussions between **the Commission and the PSA** on Monday 31 October 2022 highlighted significant differences in understanding of the impact on non-PSPA (i.e., 'normal') bargaining of a decision to "opt in" to the PSPA process. The PSA expressed a view that agency-level bargaining continues alongside centralised PSPA bargaining.

34. We have communicated with the PSA to make it clear that that bargaining that it already had underway is now covered by the PSPA process and a single fiscal envelope. We have also clarified that while the focus of the PSPA process is about agreeing a pay adjustment, unions can continue to bring other claims raised in agency bargaining into the PSPA process.
35. We will continue to manage this process but are aware that some PSA delegates may still be unclear about the settings.

### **Next Steps**

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36. You are meeting at 9:30 am on Wednesday 2 November 2022 to discuss the content of this paper.