Review of draft Staff Regulations

South Pacific Regional Fisheries Management Organisation

21 December 2015

Table of contents

1. Introduction

1.1 Our understanding

1.1.1 EY and EY Law have been appointed by MFAT to provide assistance in relation to the establishment of Staff Regulations for the Wellington-headquartered Commission of the South Pacific Regional Fisheries Management Organisation ('SPRFMO or the Commission"). The Commission's Rules and Regulations that were published in January 2015 outline the purpose, order of business and financial regulations of the Commission. The Staff Regulations outline the terms and conditions of working. The Commission would like the Regulations to align with New Zealand's legal and employment environment as well as recognise the terms and conditions of similar international organisations. A first draft of the Staff Regulations was issued in May 2015.

1.1.2 The Commission entered into a Headquarters Agreement with the Government of New Zealand on 3 April 2014 ("Headquarters Agreement"). The Headquarters Agreement gives the Commission, some of its staff and designated persons, privileges and immunities to facilitate its functions under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.

1.1.3 Importantly, Article 5 of the Headquarters Agreement provides that the Commission and the property, premises and assets of the Secretariat will have immunity from all suit and other legal proceedings, subject to a number of exemptions. We note that one relevant exemption is in respect of, following a court order, claims for "salaries, wages or other emoluments owed by the Secretariat" to staff members and experts.

1.1.4 The Commission is the first organisation of this nature to be headquartered in New Zealand. Accordingly, the Staff Regulations must be robust when compared with other jurisdictions, and are likely to form a precedent for any future international organisation that is headquartered in New Zealand.

1.1.5 We understand your guiding principles for the Staff Regulations are: fit for purpose, fair to all employees and financially sustainable for Member States into the future.

1.1.6 We understand that there are currently three employees, the Executive Secretary, Dr. Johanne Fischer, a Data Manager and an Administration Officer. We understand that all three current employees fall within the Professional Category (adopting the UN staff classification definitions). There may be additional employees employed by the Secretariat in the future, which may be recruited either locally in New Zealand or from other overseas jurisdictions.

1.1.7 You have asked EY and EY Law to review the draft Staff Regulations and specifically to address education allowances, medical and employee risk insurances and superannuation/pension comparability between the Commission, other similar international organisations and general market practice in New Zealand (including consideration of any relevant New Zealand employment law requirements).

1.1.8 If any aspect of our understanding is incorrect, please let us know as this may change the substance of our advice.

1.2 EY's approach

1.2.1 Our analysis has two core components:

1. A legal review of the draft Staff Regulations dated May 2015. We have compared the Staff Regulations with New Zealand legislative employment requirements and practice, identifying areas of risk or non-compliance with local legislation and making recommendations where necessary. We have also identified areas where we consider that the Staff Regulations, as currently drafted, may create uncertainty in their interpretation.

2. A comparative analysis of the material benefits provided in the draft Staff Regulations against New Zealand market practice as well as comparable international organisations. This report has been prepared on an exception basis; therefore we have not included commentary on benefits which are considered to be in line with common market practice or New Zealand legislation.

    - EY has used its remuneration database to determine broader New Zealand organisational practice. This database contains remuneration data for over 130,000 individual incumbents in more than 350 New Zealand organisations;

    - For the purposes of our report, comparable international organisations are defined in section five.

1.2.2 We met with Alex Jebson and David Dolphin from MFAT to discuss the scope of our work and MFAT's key concerns regarding the current draft of the Staff Regulations. EY also met with the Executive Secretary, Dr. Johanne Fischer, who has provided EY with a memorandum outlining her concerns in relation to the proposed social security provisions and education allowances. Where relevant, we have commented on Dr. Fischer's concerns and suggested solutions.

1.2.3 All data sources reviewed and referenced in this report have been outlined in section five of this report.

1.3 Out of scope

1.3.1 For the purposes of this report, we note the following:

- EY has not performed market benchmarking for employee salaries or commented on the current total compensation paid to international employees;
- Following any recommendations made in this report, EY has not assessed the financial impact that any amendments or additional benefits may have on the funding of the SPRFMO;
- EY has not considered the current employees' eligibility to government funded superannuation and pension in New Zealand and their home countries. This is on the basis that legislation may change over time and the impact on an individual's eligibility as well as on individuals' personal circumstances may change;
- We have not commented on the impact of the immigration status for the current employees and their individual eligibility to New Zealand social security; and
- We have not received the specific details (employment contracts, employment status) for the three current employees. Therefore, unless noted specifically, our review and commentary are not in reference to current employees' individual circumstances.

1.4 Further steps

1.4.1 With this final report, EY Law has also provided a copy of the Staff Regulations marked up with proposed changes approved by MFAT.

1.4.2 The SPRFMO may wish to model the financial impact of providing any additional benefits as well as on an employee's total compensation package relative to market practice. EY would be happy to provide any additional support as required.

2. Executive summary

2.1 Legal review

2.1.1 The draft Staff Regulations accord largely with New Zealand law, with only a few exceptions, which we have highlighted in Appendix A. The majority of our proposed amendments are to either improve the clarity of the benefit entitlements or to improve their practical application.

2.1.2 We have identified all instances where the Staff Regulations are not compliant with New Zealand employment legislative requirements. These inconsistencies provide a useful comparative backdrop to the Regulations and help with establishing an equitable balance in the benefits offered under the Regulations. However, other than in respect of the exclusion from immunity under Article 5 of the Headquarters Agreement (referred to in clause 1.1.3 above) for claims related to salaries, wages and emoluments offered under the Regulations, inconsistencies with New Zealand legislation will not put the Commission at risk of other employment rights claims.

2.1.3 Where we have identified areas of risk that are not immune from suit or legal proceedings, we have highlighted these and made recommendations.

2.2 Benefits review

2.2.1 A summary of our recommendations following a review of the material benefits is outlined in the table on the following page.

2.2.2 The recommendations provided should be considered in conjunction with the SPRFMO's reward strategy and each employee's total compensation package. The provision of additional benefits could result in employee's total compensation being set above the appropriate market position or approved organisation rates.

2.2.3 However, given the purpose, size and structure of the organisation, the SPRFMO has some degree of flexibility to tailor benefits to an individual's needs. This may be an appropriate approach to facilitate some of the concerns from the Secretariat and meet individual employees' needs.

Benefit	Recommendations
Regulation 5 **Education allowance**	1. We consider that whilst access to tertiary education is less common across the comparator group, the SPRFMO may wish to consider providing this benefit, subject to a review of the associated costs and sustainability. A shared cost arrangement or an allowance up to a capped maximum may be an alternative arrangement. 2. The access to non-compulsory educational courses is not standard practice within the comparator group. The SPRFMO should evaluate whether this request could be managed as a one-off benefit or contribution to impacted employees (included as part of their total compensation package) as opposed to a blanket organisation-wide entitlement.
Regulation 8 **Overtime**	3. The current proposal for overtime is in line with the comparator group. However, if well managed with robust processes, a detailed Time off in Lieu (TOIL) policy would be the cost effective option for the SPRFMO. High levels of overtime can put undue pressure on limited financial resources which may not be sustainable for SPRFMO over time. We recommend that a well-documented overtime and TOIL policy be considered.
Regulation 5 **Superannuation**	4. We consider an individual retirement plan (defined contribution) is an appropriate vehicle for the SPRFMO to provide a retirement benefit to employees. 5. There are a number of factors for the SPRFMO to consider when determining whether an additional contribution (above the current proposal) should be made. This includes comparison to the comparator group, but also the Secretariat's concerns and the extent to which superannuation is a tool used to attract and retain employees who are critical to the organisation. Further discussion on the position of the SPRFMO and the financial implications of any proposed increases needs to be considered.
Regulation 8 **Medical and employee risk insurances**	6. In order to bring the Staff Regulations in line with the comparator group, we recommend that the SPRFMO consider providing access to insurance to cover international employees in the event of death, disability or the inability to work due to an accident. To facilitate this access, the SPRFMO may wish to set up a shared cost arrangement whereby SPRFMO pays a percentage of the costs and the employee also contributes to manage the financial impact to the organisation.

3. Review of draft Staff Regulations

We have attached at Appendix A a detailed analysis of each section of the draft Staff Regulations (Version 2) from a New Zealand employment law perspective. We have included against each Regulation the relevant equivalent NZ legislative provision and our comments and recommendations.

Largely, the benefits set out in the Staff Regulations accord with New Zealand employment law, or are slightly more generous than the benefits provided under New Zealand minimum standards. Where benefits are significantly more generous these have been detailed below.

We have set out below those that we feel should be drawn specifically to your attention.

3.1 Family benefits – Regulations 2 and 7

3.1.1 A number of benefits are granted to "dependants" and "families" within the draft Regulations. However the definitions as drafted are inconsistent, both internally with the Regulations and with the definitions within employment legislation in New Zealand. For example, Regulation 2.2 contains reference to the word "spouse". "Spouse" is defined by the Employment Relations Act 2000 as "husband or wife", whereas the term "partner" also includes a civil union or de facto relationship. Regulation 7.6 refers to an airfare benefit extending to "dependants", but the definition of "dependants" earlier in the Staff Regulations does not necessarily include a spouse or partner. We recommend that the definitions of familial relationships be clarified so that they are consistent internally and accord with definitions set out in New Zealand employment legislation.

3.2 Staff Member definitions – Regulation 2

3.2.1 The Commission entered into a Headquarters Agreement with the Government of New Zealand on 3 April 2014 ("Headquarters Agreement"). The Headquarters Agreement gives the Commission, some of its staff and designated persons, privileges and immunities to facilitate its functions. Importantly, Article 5 of the Headquarters Agreement provides that the Commission and the property, premises and assets of the Secretariat will have immunity from all suit and other legal proceedings, subject to a number of exemptions. We note that one relevant exemption is in respect of, following a court order, claims for "salaries, wages or other emoluments owed by the Secretariat" to "staff members" and experts. Article 14 of the Headquarters Agreement also sets out a number of immunities that "staff members" enjoy. Regulation 2.9 refers to these privileges and immunities. However, the definition of Staff Member under the Headquarters Agreement and the definition under the Staff Regulations differ, which may cause some confusion. In particular, locally recruited persons on hourly rates of pay are excluded from the definition of Staff Member under the Headquarters Agreement, but are not so excluded under the Staff Regulations.

3.3 Annual leave – Regulation 7

3.3.1 The leave provisions set out in Regulation 7.1 contain a number of omissions that may lead to a lack of clarity. For example, the Regulations do not clarify how employees will be paid for periods of annual leave (whether this is on the basis of base salary/wages only or using the Holidays Act 2003 calculations). The Regulations should also clarify that holiday entitlements will be pro-rated for part-time employees. Finally, the

Commission may wish to specify whether leave can be taken in advance, and if so, whether the relevant amounts are repayable if employment terminates prior to accrual.

3.4 Home leave – Regulation 7

3.4.1 The home leave provisions in Regulation 7.6 could also benefit from clarification. It would be helpful to include a definition of "home country"; for example, is "home" intended to be the country of citizenship? The UN has a home country designation, which the Commission may wish to leverage. It is currently unclear whether "home leave" is the same as the provision of airfares, in that the employee is also required to take annual leave for this period. The scope of the benefit (and particularly its applicability to dependants and spouses/partners) could also benefit from clarification. Finally, the Regulations should also specify whether there is any penalty if the employee does not return for the additional 6 month period following home leave (i.e. do the airfares need to be reimbursed)?

3.5 Superannuation – Regulation 8

3.5.1 The superannuation provisions are substantially more generous than the current statutory entitlements under the KiwiSaver Act 2006. A detailed analysis of the different options available to the Commission is set out at 4.3.

3.6 Sick leave – Regulation 8

3.6.1 The sick leave provision contained in Regulation 8.3 (which provides paid sick leave for a 12 month period) is exceptionally generous. It also gives rise to a potential inconsistency with Regulation 10.3 which provides for termination from employment with 3 months' notice if a staff member is "incapacitated for service". Normally an employer would have difficulty terminating the employment of an employee who had outstanding paid sick leave entitlements.

3.7 Separation from Service – Regulation 10

3.7.1 The provisions around misconduct and poor performance in Regulation 10.3 could benefit from further detail. Currently, the Commission can give 3 months' notice to a staff member who is not giving "satisfactory service". It has been proposed that the Regulations should provide that the staff member be given the opportunity to improve their performance. We recommend that this is included from an equitable perspective given the substantive dismissal procedures that apply in New Zealand (although we note of course that the Commission has immunity from suit in this regard). We also recommend that provision be made in Regulation 10 to allow the Commission to dismiss employees summarily (i.e. without providing 3 months' notice) in cases of serious misconduct (the term "gross dereliction of duties" could be used as this is consistent with the wording of Regulation 10.4).

3.8 Temporary Personnel Under Contract – Regulation 11

3.8.1 The provisions in Regulation 11.1 regarding the "contracting" of temporary personnel are unclear. In particular, it is not apparent whether these individuals are being engaged as casual employees or contractors (as this type of work could be resourced in either way). If the individuals are engaged as contractors, then arguably the Staff Regulations ought not apply to them. If they are temporary employees, then the benefits to which they are (and are not) entitled under the Staff Regulations ought to be clearly set out.

3.9 Additional Provision

3.9.1 The Regulations currently do not contain any health and safety provisions. While these are not specifically required by statute in New Zealand, it is common practice to include health and safety provisions in employment agreements, particularly given the impending Health and Safety at Work Act 2015 (due to come into force on 4 April 2016).

4. Comparative analysis of employee benefits

EY has undertaken a review of the benefits provided in the draft Staff Regulations with comparison to the international comparator group and New Zealand general market practice. This section addresses the material benefits included in the draft SPRFMO staff regulations which warrant further discussion or which you have specifically requested us to address.

The comparator group referenced below is defined as the international organisations listed in section five and New Zealand general market practice.

4.1 Education allowances – Regulation 5

4.1.1 The draft Staff Regulations currently propose an education allowance for employees of the International Professional category. The proposed allowance is in principle, the same entitlement for employees of the United Nations (UN). This allowance is to enable school aged dependants attendance at educational institutions where their attendance is compulsory. However, the allowance is not currently payable in respect of the following circumstances:

- Children of New Zealand staff members;
- For attendance at a New Zealand school;
- For attendance at a University in New Zealand;
- For correspondence course or private tuition;
- Where schooling does not require regular attendance at the institution; and
- In respect of education expenses covered from scholarship grants or subsidies from other sources.

United Nations allowance

4.1.2 The UN common system for salaries, allowances and benefits[1] provides for a grant of equivalent to 75 percent of costs subject to a maximum applied. This is payable up to the end of the fourth year of post-secondary studies, or to a maximum age of 25 years.

Secretariat commentary

4.1.3 We acknowledge that the Secretariat has provided commentary that the allowance should also include non-compulsory education. The primary concern is to ensure that children of international employees are not disadvantaged relative to local hires. This benefit would allow dependants to seek education relevant to their home country which may not be compulsory in New Zealand, such as foreign language courses.

Comparison to comparator group

4.1.4 The approach to education allowances is varied across the comparator group ranging from compliance with the UN common system at one end to limited or no educational support. The UN policy at the most generous end of the scale, includes tertiary education and in certain circumstances, costs associated with boarding school.

4.1.5 Common market practice for international employees working in New Zealand (on an expatriate assignment) is to pay reasonable education costs to provide an education for dependants of the same quality as they would expect in their home country[2]. This is typically limited to secondary school and can be subject to maximum limits.

New Zealand education system

4.1.6 New Zealand provides a comprehensive education system with government funded education from early childhood through to tertiary education.

- Primary and secondary school for international students is subject to school fees which are often higher than New Zealand residents. However, diplomat's children have student visas due to being dependent to a Diplomatic work visa holder. This allows them domestic student status at primary and secondary schools and consequently free primary and secondary schooling.

[1] International Civil Service Commission, January 2014
[2] EY's remuneration database

- Some children may be eligible for domestic student status at tertiary level as well, but this is taken on a case by case basis, depending on what country they are from etc.

- Fees apply for attendance at a tertiary institution for international students (i.e. a person studying in New Zealand on a student visa) and can be in excess of $20,000 per annum for an undergraduate degree.

4.1.7 We note, the cost of providing tertiary education for international employees whose dependants are in New Zealand may be prohibitive for employees given the costs of education for international students.

Recommendation

4.1.8 Access to tertiary education is much less common, typically given the costs associated with providing this benefit. However, if the SPRFMO would like to offer this benefit they should consider a shared costs arrangement or provide an allowance up to a capped limitation.

Non-compulsory education courses

4.1.9 Secondly, the ability to access non-compulsory educational courses is not standard practice both within the comparator group and is not common market practice in New Zealand.

- We understand that there is one employee who wishes to provide their dependant with additional educational courses. We have not received specific details of the employee's requirements including the anticipated cost and duration.

- The SPRFMO should evaluate whether this request could be managed as a one-off benefit or contribution to the employee (included as part of their total compensation package) as opposed to an organisational wide entitlement.

- This option would support the individual's request as well as manage the SPRFMO's ongoing financial commitments.

- The provision of any additional benefit should also be assessed in conjunction with the employee's total compensation as it may result in their total compensation being set above the appropriate market position or organisational rates should this benefit be considered material to the employee.

4.1.10 The considerations outlined above should be balanced against the ability of the SPRFMO to fund this benefit for employees and the demand that this may put on Member State contributions. We have not reviewed the financial impact of this recommendation and before accepting, the SPRFMO should further assess the financial impact of providing this benefit.

4.2 Overtime – Regulation 5

4.2.1 The Staff Regulations propose overtime rates that apply to general service employees who work over 40 hours during one week with overtime payable either at 1.5 times the equivalent hourly rate for each hour of overtime worked or alternatively provided with the equivalent as time off in lieu (equivalent to the hours of overtime worked).

Comparison to comparator group

4.2.2 This current proposal is in line with overtime provided by organisations in the comparator group.

4.2.3 However, whilst overtime has been relatively common in New Zealand public sector organisations, there is an increasing trend towards time off in lieu (TOIL) as an appropriate means to compensate overtime and reduce the impact of an increased wage and salary fixed cost that is increasingly unsustainable for public organisations.

Recommendation

4.2.4 If well managed with robust processes, TOIL would be a more cost effective option for the SPRFMO. High levels of overtime can put undue pressure on limited financial resources which may not be sustainable for SPRFMO over time. However, this is contingent on the ability for the employee to take TOIL in an acceptable timeframe agreed between parties.

4.2.5 We recommend that a well-documented overtime policy be considered which addresses the following:

- The accrual rate of TOIL, e.g. on a 1:1 basis;
- The definition of TOIL to include; Informal TOIL (which is self-managed) and Formal TOIL (which is pre-approved, recorded and taken within a certain time period);
- Whether there is a cap, providing a maximum number of TOIL hours that can be accrued;
- The time limit for taking TOIL to ensure accrued time in lieu does not reach unmanageable levels; and
- The impact of TOIL when employment ends or when it is not taken within a set time period, and the level of compensation provided in these circumstances.

4.3 Superannuation – Regulation 8

4.3.1 The New Zealand retirement savings market is not particularly well developed compared to other countries. The government superannuation scheme and KiwiSaver restricts membership to: New Zealand citizens or those entitled to live in New Zealand indefinitely, who are living or normally living in New Zealand and under 65 years. Therefore this scheme cannot be applied to international employees, who are not New Zealand residents.

4.3.2 Under the proposed draft SPRFMO staff regulations, the Commission will pay 6% of gross salary towards a recognised individual retirement fund.

Commentary from the Secretariat

4.3.3 We acknowledge the concerns of the Executive Secretary who proposes an increase of Commission contributions to 11%. This is to address the inequality between international and New Zealand employees, who are also eligible (at the current date of this report) to a government funded superannuation at the age of 65 years. The Executive Secretary's concern is that international employees, due to the nature of their employment, may not be eligible to government funded pensions in their home countries and therefore have a limited ability to build retirement savings of the equivalent size.

4.3.4 An additional concern raised by the Executive Secretary is that the employees are not able to participate in a group retirement scheme (defined benefit). The nature of a group retirement scheme is that it provides participants with a defined pension sum for life beginning at retirement with the resulting liabilities often managed by the organisation. Contribution rates are calculated on the basis of the total contributions required to fund the retirement plan. As a result they are often higher than individual retirement plans.

Comparison to comparator group

4.3.5 Individual superannuation schemes have traditionally been common in the public sector in New Zealand and are considered a key part of the remuneration offering. However, we note Government Superannuation Fund (GSF) is now closed to new members. The current proposal (of 6%) is in line with:

- Common practice for employer contributions in New Zealand which are approximately between 3% – 6% of base salary, with an average employer contribution rate of 5.7%[3]; and

---

[3] EY's remuneration database

- The two Australian RFMOs, the Convention of Conservation of Antarctic Marine Living Resources and Commission for the Conservation of Southern Bluefin, both based in Canberra, offer 2/3 of the statutory superannuation guarantee (the statutory amount currently being 9.50% of gross salary) paid into an individual superannuation scheme of the employee's choice; and

- In our experience, global market practice is moving towards individual retirement plans (defined contribution) as the main vehicle to provide retirement benefits. This is on the basis that the open-ended nature of the group retirement schemes and the financial burden these can place on organisations is seen as unsustainable over the longer term.

4.3.6 Contributions for other organisations within the comparator group vary depending on the type of scheme.

- The two European RFMOs (International Commission for the Conservation of Atlantics Tunas and North-East Atlantic Fisheries Commission) have the highest contribution rates of the comparator group at 15.8%, which is in accordance with the UN allowances. Both these schemes are group retirement schemes.

- The RFMOS headquartered in other non-European countries (Northwest Atlantic Fisheries Organisation, NAFO and Western and Central Pacific Fisheries Commission, WCPFC). The contribution rates range from 2% to 7.5% of base salary.

Recommendation

4.3.7 Firstly, we consider that an individual retirement plan is an appropriate vehicle for the SPRFMO to provide a retirement benefit to employees. This is on the basis that the administration, funding and financial implications of operating a group retirement scheme is unlikely to be sustainable within the funding environment of the SPRFMO. It is also outside of the trend towards defined contribution schemes.

4.3.8 Secondly, in determining an appropriate contribution rate to be paid by the Commission, we believe there are several factors that the SPRFMO should consider;

- Whether the SPRFMO wishes to replicate retirement benefits that are provided through group retirement schemes; i.e. employees receive additional contributions (above the current market practice for individual schemes) to compensate for not receiving a defined benefit[4] pension;

[4] As per the Superannuation Schemes Act 1989, a defined benefit fund means a superannuation scheme which operates on the principal of unallocated funding. Section 2(2) of that Act states that a superannuation scheme shall be deemed to operate on the principle of unallocated funding if the contributions to the scheme are not allocated on a defined basis to individual members

- The extent to which retirement benefits impact the organisation's ability to attract and retain a suitable calibre of employees from Member States;
- The extent to which international employees may not access a national superannuation/ pension fund in their home country; and
- The funding implications of any additional contributions by the Commission and the sustainability of financing these contributions in the future.

4.3.9 Whilst the current proposal is in line with market practice and in considering the factors outlined above and the Secretariats concerns, the SPRFMO may determine an additional contribution is appropriate.

4.4 Medical and employee risk insurances – Regulation 8

4.4.1 The Accident Compensation Commission (ACC) provides non-fault personal injury cover for all New Zealand residents and visitors to New Zealand. This includes overseas visitors and foreign diplomats. However other publicly funded health, disability and social security benefits are not available to overseas visitors who are not residents of New Zealand.

4.4.2 Under the proposed Staff Regulations, there is a provision for medical insurance for employees and their families who are not eligible for publicly funded services, i.e. international employees who are not residents of New Zealand. There is no provision for total permanent disability cover, life insurance or critical illness support.

4.4.3 We acknowledge that the Executive Secretary has provided commentary on additional provisions for life, accident, disability and/ or income protection insurance. This is on the basis that international employees do not have equivalent cover available through the ACC scheme and other public benefits.

Comparison to comparator group

4.4.4 Access to adequate medical, life and disability insurance is a benefit that is provided in five out of the seven of organisations in the comparator group. This is provided directly by the employer through an insured arrangement or as a contribution to the employee up to a specified maximum.

4.4.5 Broader insurance benefits are not common practice in New Zealand in both public and private sector largely due to the decline in super schemes. However, data from EY's remuneration database (as at November 2014) indicates over $^{1}/_{3}$ of organisations do provide some form of total permanent disability and life insurance to employees.

United Nations allowance

4.4.6 The UN common system for salaries, allowances and benefits5 provides group health insurance schemes to staff members and their dependants and subsidisation of the premiums. Participation in group life or accident insurance schemes are voluntary, and the costs of these schemes are borne by the staff member.

Recommendation

4.4.7 In order to bring the Staff Regulations in line with the comparator group, we recommend that the SPRFMO consider providing access to insurance to cover international employees in the event of death, disability or the inability to work due to an accident. To facilitate this access, the SPRFMO may wish to set up a shared cost arrangement whereby SPRFMO pays a percentage of the costs and the employee also contributes to manage the financial impact to the organisation.

4.4.8 We note that given the size of the insurance market in New Zealand, these benefits can be expensive to provide for a small employee population and the additional cost may be unsustainable for the SPRFMO. We also note that the provision of additional benefits could result in the employees' total compensation being set above the appropriate market position or organisational rates.

[5] International Civil Service Commission, January 2014

5. Data sources

The following data sources have been used to complete this report:

Regional Fisheries Management Organisations

- The South Pacific Regional Fisheries Management Organisation (SPRFMO) DRAFT Staff regulations
- United Nations Staff Rules 2014
- Convention on Conservation of Antarctic Marine Living Resources (CCAMLR) Staff regulations 2012
- Commission for the Conservation of Southern Bluefin Tuna (CCSBT) Staff regulations 1996
- International Commission for the Conservation of Atlantic Tunas (ICCAT) Staff regulations and rules 2005
- Indian Ocean Tuna Commission (IOTC) Draft staff regulations 2007
- Northwest Atlantic Fisheries Organization (NAFO) Staff Rules 2010
- North-East Atlantic Fisheries Commission (NEAFC) Staff Rules 1999
- Western and Central Pacific Fisheries Commission (WCPFC) Staff regulations 2013
- South-East Atlantic Fisheries Organisation (SEAFO) Staff Regulations 2015

New Zealand legislation

- Employment Relations Act 2000
- Holidays Act 2003
- Human Rights Act 1998
- KiwiSaver Act 2006
- The Headquarters Agreement

EY data

- EY's remuneration database as at 3 December 2015

Appendix A Comparison between draft Staff Regulations with New Zealand employment law requirements

Draft Staff Regulations	NZ Law	Commentary/Recommendation
Regulation 1: Preamble		
1.1 These Staff Regulations establish the fundamental principles of employment, regulate the working relationships and establish the rights and responsibilities of formally appointed employees who render their services in and receive remuneration from the Secretariat of the Commission of the South Pacific Regional Fisheries Management Organisation.	► Employers are free to establish their own employment terms and conditions by negotiation with employees (subject to minimum standards that must be met). ► The terms must be set out in a written employment agreement which must cover certain specific provisions (see our comments under Regulation 6.4 below).	► The Commission is entitled to deviate from the requirement to issue Individual Employment Agreements (IEA), due to the immunity provided for in Article 5 of the Headquarters Agreement. ► Nonetheless, the Staff Regulations together with the appropriate appointment letter will constitute the employment agreement of the relevant employee. We recommend that this be made clear in the appointment letter.
1.2 These Regulations should be applied giving due regard to the geographical distribution of the Members of the Commission of the South Pacific Regional Fisheries Management Organisation (hereinafter called the Commission).	► No equivalent provision	
Regulation 2: Duties, Obligations and Privileges		
2.1 Members of the staff of the Secretariat, and the Executive Secretary (hereinafter called "staff members") are international civil servants. Upon accepting their appointments they pledge themselves to discharge their duties faithfully and to conduct themselves with the interests of the Commission in mind.	► No equivalent provision	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
2.2 For the purposes of these regulations the term "dependant" shall include only: a) any unsalaried child, who is born of, or adopted by, a staff member, his or her spouse, or their children, who is below the age of eighteen years and who is dependent on a staff member or his or her spouse for main and continuing support; b) any child fulfilling the conditions laid down in paragraph (a) above, but who is between eighteen and twenty-five years of age and is receiving school or university education or vocational training; c) any handicapped child who is dependent on a staff member or his or her spouse for main and continuing support; d) any other child who is given a home by and is dependent on a staff member or his or her spouse for main and continuing support; e) any person related by blood or marriage for whose main and continuing support a staff member or his or her spouse is legally responsible.	► The term "dependant" is not defined in the Employment Relations Act 2000 ► However, the term "spouse" is defined as being a husband or wife, which appears to be a narrower definition than the one intended here	► We note that this definition is fairly wide and consider this appropriate for a Pacific environment, where there are many informal adoption and child care arrangements as well as the legal ones. ► We question whether it may also be appropriate to introduce a definition of spouse to clarify whether de facto and same sex relationships are covered (which we would assume is the case). We note this because "spouse" is defined by the Employment Relations Act 2000 as "husband or wife", but "partner" also includes a civil union or de facto relationship.
2.3 Staff members shall at all times conduct themselves in a manner in keeping with the international nature of the Commission. They shall always bear in mind the loyalty, discretion and tact imposed on them by their international responsibilities in the performance of their duties. They shall avoid all actions, statements or public activities which might be detrimental to the Commission and its aims.	► A duty of good faith must exist between an employer and an employee under s.4 of the Employment Relations Act 2000	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
2.4 Staff members are not required to renounce either their national feelings or their political or religious convictions.	► It would be contrary to the Bill of Rights Act 1990 and the Human Rights Act 1993 to require employees to renounce their national, political or religious convictions.	
2.5 In the performance of their duties, staff members may neither seek nor accept instructions from any government or authority other than the Commission. Staff members shall observe maximum discretion regarding official matters and shall abstain from making private use of information they possess by reason of their position. Authorisation for the release of information for official purposes shall lie with the Commission or the Executive Secretary, as the case may require.	► Confidential information is not defined within employment legislation. Common law has developed to include some protection around confidential information provided to employees during the course of employment, but a lack of clarity remains regarding whether this protection extends beyond highly confidential "trade secret" information. Consequently, it is common for New Zealand employment agreements to contain a contractual confidentiality clause.	► Given the importance attached to the confidentiality of the Commission's information, we recommend a separate more detailed confidentiality clause setting out clearly the limitations around treatment of Commission information by staff.
2.6 Staff members shall, in general, have no employment other than with the Commission. In special cases, staff members may accept other employment, provided that it does not interfere with their duties in the Commission, and that prior authorisation by the Executive Secretary has been obtained. The Commission's prior authorisation shall be obtained in respect of the Executive Secretary.	► At present, this clause would not be contrary to employment law in NZ, but new provisions are being considered under the Employment Standards Bill 2015 which require that employers wishing to prohibit employees' working for other employers must set out the reason for the prohibition in the employment agreement.	
2.7 No staff member may be associated in the management of a business, industry or other enterprise, or have a financial interest therein if, as a result of the official position held in the Secretariat, he or she may benefit from such association or interest.	► No equivalent provision, but contractual conflict of interest provisions are common in New Zealand employment agreements.	► We would recommend that staff members are asked to declare any associations or financial interests before appointment and that staff are asked to inform and consult the Commission regarding any conflict or potential conflict of interest.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
2.8 Ownership of non-controlling stock in a company shall not be considered to constitute a financial interest within the meaning of regulation 2.7.	► This accords with usual conflict of interest provisions in New Zealand employment agreements.	
2.9 Staff members shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement between the Government of New Zealand and the Commission, pursuant to Article 6.3 of the Convention.	► No equivalent provision.	► Article 14 of the Headquarters Agreement sets out these immunities. However, the definition of Staff Member under the Headquarters Agreement and the definition under the Staff Regulations differ, which may cause some confusion. In particular, locally recruited persons on hourly rates of pay are excluded from the definition of Staff Member under the Headquarters Agreement, but are not so excluded under the Staff Regulations.
Regulation 3: Hours of Work		
3.1 The normal working day shall be eight hours, Monday through Friday, for a total of forty hours per week. 3.2 The Executive Secretary shall establish the working hours and may, in consultation with staff members, alter them for the benefit of the Commission as circumstances may require.	► Employment legislation requires normal working hours to be prescribed in an IEA and an indication of the arrangements relating to the times the staff member is to work.	► We recommend that normal working hours (or hours between which the eight hours of work should be performed) should be specified within each letter of appointment so there is clarity. ► The letter of appointment should also specify whether this is inclusive of breaks or not.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
Regulation 4: Classification of Staff		
4.1 Staff members shall be classified in either of the two following categories: (a) PREVIOUS: Professional Category. Positions of high responsibility of a managerial, professional, or scientific nature. These posts will be filled by appropriately qualified professionals, preferably with University qualifications or the equivalent. **Staff members in this category will be recruited internationally.** PROPOSED: Internationally recruited staff (UN: Professional Category): Positions of high responsibility of a managerial or scientific nature. These posts will be filled by appropriately qualified professionals, preferably with university qualifications or the equivalent. **Staff members in this category will be recruited internationally**.	► The Human Rights Act 1993 requires employers not to discriminate directly or indirectly on the grounds of race or ethnic or national origins. It would therefore be unlawful to state that certain roles would be filled only by internationally or locally recruited individuals.	► For clarity, we recommend that the words ("including, where appropriate, from New Zealand") be included following "recruited internationally" to confirm that New Zealanders are not precluded from the professional category positions. ► In addition, for reasons of clarity, we recommend that the UN staff designations are retained, as these are commonly used terms with a well understood meaning. If a change in terminology is considered necessary, "operational category" and "administrative" category, may be appropriate.
(a) PREVIOUS: General Services Category. Auxiliary administrative and technical positions. Clerical, secretarial and other office personnel. Such staff members shall be recruited in the host country. PROPOSED: Locally recruited staff (UN: General Service Category): administrative and technical positions. Such staff members shall be recruited in the host country. *Explanation: The term "auxiliary" does not do justice to the often highly qualified tasks (IT, administration, translation, etc) performed by locally recruited staff.*		

Draft Staff Regulations	NZ Law	Commentary/Recommendation
4.2 Persons employed under Regulation 11 shall not be classified as staff members.	► No equivalent provision.	► We comment further on Regulation 11 below.
Regulation 5: Salaries and other remuneration		
5.1 PREVIOUS: The scale of salaries for internationally recruited staff members shall be established in US dollars according to the corresponding scales of salaries which would apply to officials of the United Nations Secretariat employed in New Zealand and shall be paid in New Zealand dollars. PROPOSED: The scale of salaries for internationally recruited staff members shall be established in US dollars according to the corresponding scales of salaries which would apply to officials of the United Nations Secretariat employed in the host country and shall be paid in the currency of the host country. The type of allowances available to staff members in the International Professional category shall, in principle, be those allowances in force in the United Nations. The scale of allowances shall be established in US dollars according to the corresponding scales of allowances which would apply to officials of the United Nations Secretariat in the host country and shall be paid in the currency of the host country. *Explanation: Standard for RFMOs (based on UN staff 4 rules). The proposed wording includes text found in the CCAMLR and CCSBT Staff Regulations.*	► Salary level is to be negotiated between employer and employee, subject to establishing that minimum wage requirements under the Minimum Wage Act 1983 are satisfied either on an hourly, daily, weekly or fortnightly basis. The current minimum wage for adult employees is $14.75 per hour. ► There are no statutory provisions for educational allowances in New Zealand and so any such benefit is contractual, as agreed between employer and employee.	► We refer to our comments in the Executive Summary with regards to Article 5(2)(e) of the Headquarters Agreement and also to the specific remuneration commentary at section 4 of this report. ► Therefore, care must be taken to ensure that all salary and benefit entitlements are clearly defined in the Staff Regulations and paid in accordance with those provisions. ► In respect of this provision, we recommend that: ► Consideration be given to the exchange rate that will be used to convert US dollars into New Zealand dollars for salary payment purposes; ► The meaning of "New Zealand staff members" should be made clear, in particular, whether this includes New Zealand citizens, permanent residents or tax residents. We would suggest that the exclusion ought to apply to New Zealand citizens or permanent residents ordinarily resident in New Zealand.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
However, education allowances for each dependant child shall not be paid: *Explanation: The following list of exclusions should be discussed. The Secretariat is concerned that they would be overly restrictive to foreign staff members from a different cultural and linguistic background than New Zealand. Also, it appears that attendance of a university in New Zealand is more costly for non-resident staff than for those from New Zealand (Secretariat is still investigating).* a) in respect of children of New Zealand staff members; b) in respect of attendance at a New Zealand school; c) for attendance at a University in New Zealand; d) for correspondence courses or private tuition; e) when schooling does not require regular attendance at an education institution; f) in respect of education expenses covered from scholarship grants or subsidies from other sources.		
5.2 Staff members in the locally recruited category shall, in principle, be paid at rates equivalent to those paid in Wellington for staff of equivalent qualifications and experience.	► Salary/wage levels are to be negotiated between employer and employee, subject to establishing that minimum wage requirements under the Minimum Wage Act 1983 are satisfied either on an hourly, daily, weekly or fortnightly basis. The current minimum wage for adult employees is $14.75 per hour.	► We note that the agreement from which this provision is taken refers to a specific scale. However, the clause as drafted simply assumes that market rates will be paid, which is sufficient.
5.3 The promotion of staff members from one salary scale to another requires the prior approval of the Commission.	► No equivalent provision.	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
5.4 The Commission shall levy from each employee's salary an amount for Staff Assessment. Staff Assessment rates shall be those in force in the United Nations.	► New Zealand employees pay tax on their employment income at source (deducted by the employer under the PAYE scheme).	► Under Article 14 (5) of the Headquarters Agreement, some Staff Members are exempt from all taxes on income. ► We note that: ► "Taxes on income", is wider than income tax and may also include other taxes that are levied against an individual's income, such as ACC levies. ► The exemption under the Headquarters Agreement will depend on whether the employee is a "staff member" for the purposes of the Headquarters Agreement and, if so, their residency and citizenship status. ► Accordingly, we recommend that the Staff Regulations are amended to provide that where employees are not subject to national taxes on income under the Headquarters Agreement or where such taxes are able to be reimbursed to the employee (with the costs of such reimbursement being met by the employee's home country) then the Commission will be entitled to levy the Staff Assessment at the usual rates. It should also be clarified whether the staff assessment is to be levied against salary (as is currently set out in the Staff Regulations) or against salary and emoluments (as provided for in the UN Staff Regulations).
5.5 The Executive Secretary shall make arrangements to ensure that any staff member who is subject to national income tax is reimbursed tax paid on his or her salary. Such arrangements shall be made only on the basis that the direct costs of reimbursement are paid by the staff member's home country.	► New Zealand employees pay tax on their employment income at source (deducted by the employer under the PAYE scheme).	► See above.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
5.6 Each staff member shall have their performance assessed annually by the Executive Secretary. The annual performance of the Executive Secretary shall be completed by the Chairperson on behalf of the Commission.	► There is no legal requirement to conduct annual performance reviews although this is common practice in New Zealand.	► The word "review" ought to be inserted into the second sentence following the word "performance".
5.7 Staff members may receive annual increments. Increments shall cease once the staff member has reached the highest step in the grade in which he or she is serving.	► There is no on employers to increase pay in New Zealand, whether by an annual increment or otherwise.	► We would recommend that, for clarity, it be confirmed that whether any increment is awarded will be at the discretion of the Executive Secretary and that no increase in pay, whether by way of annual increment or otherwise, is guaranteed.
5.8 Staff members in the professional category are not entitled to overtime pay or compensatory leave	► NZ law allows employers and employees to enter into arrangements whereby overtime work is not compensated beyond the negotiated yearly salary. This however, is subject to minimum wage requirements for ordinary working hours being met, as set out above.	► We recommend that additional wording be added to this section to clarify that the salary and other benefits provided to employees in the Professional Category are intended to compensate them fully for the performance of all of their duties.
5.9 Staff members in the general services category required to work more than 40 hours during one week will be compensated: (b) with compensatory leave equivalent to hours of overtime performed; or (c) by remuneration per overtime hour, to be estimated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 7.8, at the rate of double time.	► There is no fixed rate of overtime in New Zealand, although the minimum wage requirements set out above, will continue to apply.	► For clarity we recommend that the Staff Regulations set out whether the employee or the Executive Secretary gets to decide whether overtime or compensatory leave will be provided and whether, in order to qualify for this, the overtime needs to be approved in advance by the Executive Secretary.

Draft Staff Regulations		NZ Law	Commentary/Recommendation
Regulation 6: Recruitment and Appointment			
6.1	In accordance with Article 14 of the Convention, the Contracting Parties shall appoint the Executive Secretary and shall establish his or her remuneration and such other entitlements as it deems appropriate.	► No equivalent provision.	
6.2	In accordance with Article 14 of the Convention, the Executive Secretary shall appoint, direct, and supervise staff. The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. Any staff appointed before the adoption of these staff regulations shall be deemed to have been appointed under these regulations.	► Under New Zealand law, an employer cannot unilaterally change the terms and conditions of its employees.	► It is important to clarify that, were employees are deemed to have been appointed under the Staff Regulations, whether their terms and conditions are also deemed to be those set out in the Staff Regulations.
6.3	Staff shall be required to retire on reaching the age of 65 years with the exception of an Executive Secretary whose four year appointment commenced prior to reaching the age of 65 and who then reaches 65 year during that term, who will be required to retire at the end of that term.	► There is no fixed retirement age in New Zealand. Employers cannot require employees to retire at a particular age as this would amount to age discrimination under the Human Rights Act 1993.	► Given the indemnity from suit in the Headquarters Agreement, this clause can remain if desired. However, consideration ought to be given as to whether mandatory retirement remains appropriate given the introduction of age discrimination provisions in number of jurisdictions.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
6.4 Upon selection, each staff member shall receive an **offer of appointment** stating: (a) that the appointment is subject to the staff regulations applicable to the category of appointment in question, and to changes which may be duly made in such regulations from time to time; (b) the nature of the appointment; (c) the date on which the staff member is required to commence duty; (d) the period of appointment, the notice required to terminate it and the period of probation; (e) the category, level, commencing rate of salary and the scale of increments and the maximum salary attainable; (f) the allowances attached to the appointment; (g) any special terms and conditions which may be applicable.	► In New Zealand the legislation requires that an employee receives a written IEA containing such terms and conditions as the employee and employer think fit. ► The IEA must include: ► the names of the parties; ► a description of the work to be performed; ► indication of where the work is to be performed; ► indication of the arrangements relating to times of work; ► wages or salary payable; and ► a plain language explanation of the services available for the resolution of employment relationship problems.	
6.5 Together with the offer of appointment, staff members shall be provided with a copy of these Regulations. Upon acceptance of the offer staff members shall state in writing that they are familiar with and accept the conditions set out in these Regulations.	► There is no specific requirement in New Zealand for IEAs to be signed by the employee (except where they contain a trial period), although this is usual practice.	
6.6 Internationally recruited staff members may be required to undergo medical examination from time to time as determined by the Executive Secretary or the Commission as the case may require. The medical examinations shall be at the expense of the Commission.	► An employer cannot force an employee to have a medical examination unless they consent to this either in an employment agreement or separately. However, a failure to provide medical information to an employer when requested may mean that any decisions by the employer need to be made in the absence of such information.	► The Commission should consider whether to insert some reasoning at the beginning of this clause, such as "in order to assess whether a staff member remains able to perform his/her full range of duties…" ► The Commission also ought to consider whether it wishes to widen this requirement to all employees.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
Regulation 7: Leave		
7.1 Staff members shall be entitled to annual leave at the rate of two and half workdays for each full month of service. Annual leave is cumulative, but at the end of each calendar year, not more than 30 workdays may be carried over to the following year.	► Under the Holidays Act 2003 an employee is entitled to a minimum of 4 weeks' paid annual holidays once they have completed 12 months' of service with an employer. Employees must be given the opportunity to take at least 2 weeks of their annual holiday entitlement within 12 months of becoming entitled to the leave.	► 2.5 days for a month is 30 working days per 12 month period, which meets the requirements. ► It is unclear how employees will be paid for their annual leave (whether they will be paid on the basis of salary only or whether they will be paid using Holidays Act 2003 calculations). This should be clarified. ► The Staff Regulations should also provide for the leave to be pro-rated if an employee works part-time. ► The Commission may wish to specify whether leave can be taken in advance of accrual and, if so, whether the relevant amounts are repayable if employment terminates prior to accrual.
7.2 The taking of leave shall not cause undue disruption to normal Secretariat operations. In accordance with this principle, leave dates shall be subject to the needs of the Commission. Leave dates shall be approved by the Executive Secretary who shall, as far as possible, bear in mind the personal circumstances, needs and preferences of staff members.	► Leave can be taken at any time agreed between the employer and employee. The employer must not unreasonably withhold consent to an employee's request to take annual holidays. However, consent can be subject to the operational requirements of the employer's business. If both parties cannot reach an agreement then the employer can direct an employee to take their annual holidays, as long as they give the employee 14 days' notice. ► Employees can ask to take leave in advance of earning their entitlement. ► Approval is at the discretion of the employer.	
7.3 Annual leave may be taken in one or more periods.	► If the employee chooses, the employer must allow the employee to take at least 2 of their 4 weeks' annual leave in a continuous period.	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
7.4 Any absence not approved within the terms of these Regulations shall be deducted from annual leave.	► An employer cannot force an employee to take annual leave, without giving the requisite period of notice and trying to agree leave dates.	► An alternative to this (which the Commission may wish to consider) is that any unauthorised absence will be unpaid or, alternatively, the employee may wish to take the absence as annual leave.
7.5 Staff members who, upon termination of their appointment, have accumulated annual leave which has not been taken shall receive the cash equivalent estimated on the basis of the last salary received.	► Holidays Act 2003 requires accumulated annual leave to be paid out at end of employment. The Act prescribes how pay shall be calculated (and this differentiates between the leave to which the employee has become entitled and the leave which the employee has accrued).	► Regulation 7.5 is not very specific and it should set out how that calculation shall be made. For example if the last salary was inclusive of a bonus, the current paragraph might be interpreted to include that sum in the calculation.
7.6 After 18 months of service the Commission shall, in accordance with Regulations pay economy class airfares to the staff member's home country on annual leave for internationally recruited staff members and their dependants. Following this, home leave shall be granted at two-year intervals provided that: (a) dependants who benefit from this Commission grant have resided at Wellington for at least 6 months prior to travel; (b) it is expected that staff members will return to the Secretariat to continue rendering their services for a minimum additional period of 6 months.	► No equivalent provision.	► Regulation 7.6 requires a definition of home country. Is this the country of citizenship? The UN has a home country designation, which the Commission may wish to emulate. ► This clause should be clarified to confirm the benefit. Is "home leave" the same as the provisions of the airfares (in that the employee is also required to take annual leave for this period). ► The definition of "dependants" earlier in the Staff Regulations does not necessarily include a spouse or partner. Are airfares also to be provided for spouses or partners? ► The Regulations should also specify whether there is any penalty if the employee does not return for the additional 6 month period (i.e. do the airfares need to be reimbursed)?
7.7 The possibility of combining travel to home country on leave with official travel in Commission service may also be considered, provided the interests of the Commission are duly borne in mind.	► No equivalent provision.	► For clarity, it should be specified that this will be approved at the discretion of Executive Secretary (or the Commission in the case of the Executive Secretary).

Draft Staff Regulations	NZ Law	Commentary/Recommendation
7.8 Staff shall be entitled to the following holidays celebrated in Wellington, i.e.: ► 1 January New Year's Day ► 2 January ► Propose deletion: January Wellington Anniversary Day ► 6 February Waitangi Day ► Good Friday ► Easter Monday ► 25 April Anzac Day ► June Queen's Birthday ► October Labour Day ► 25 December Christmas Day ► 26 December Boxing Day	► Holidays Act 2003 prescribes 11 public holidays which are the same as those listed in Regulation 7.8.	► We agree with the suggestion of allowing staff members to transfer Wellington Anniversary to another significant day.
7.9 If under special circumstances members of the staff are required to work on one of the aforementioned days, or if any one of the above holidays (with the exception of Wellington Anniversary Day for those staff who have selected a different holiday) falls on a Saturday or Sunday, the holiday shall be observed on another day to be set by the Executive Secretary, who shall take into account the needs of the Commission.	► Under the Holidays Act 2003 employees who normally work on a public holiday, are entitled to take that day as paid leave. ► If they are required to work on the public holiday, they will be entitled to take an alternative day as paid leave and be paid time and a half for the public holiday on which they work. ► If a public holiday falls on Saturday or Sunday, it is observed on the following Monday for those employees who do not ordinarily work on a Saturday or Sunday.	► The Commission may wish to insert "Mondayisation" language (this could be done simply by reference to the Holidays Act). ► The Commission should consider whether, in addition to allowing staff an alternate day for working on a public holiday, additional pay should be provided for the time worked.

Draft Staff Regulations		NZ Law	Commentary/Recommendation
Regulation 8: Social Security			
8.1	It is a condition of employment that each staff member will contribute to Kiwisaver or an alternative recognised retirement fund. The Commission shall pay 6% of gross salary to the retirement fund. *Comment: Requires further discussion. As is, this provision causes inequality between staff members from New Zealand and those from other countries. Therefore, the Secretariat proposes that the Organisation contributes 5% more (= 11%) towards a retirement fund for international employees not from New Zealand. This would still be well below what other RFMOs and the UN are contributing (mostly 15.8%) to the pension schemes of their employees. In addition, the Secretariat would like to see some provision for life and trauma insurance.* The Commission shall pay for the cost of medical insurance for staff members and their families who are not eligible for publically funded health services.	► KiwiSaver is optional for employees in New Zealand if they meet the eligibility criteria. If they do opt into the scheme they are required to pay contributions at either 3%, 4% or 8% (with the employer contributing 3%), or they can agree a different rate.	► One alternative may be to state that for all staff, they can either opt in to KiwiSaver (if eligible) or if they are not eligible or choose not to opt in to KiwiSaver they can contribute to an alternative recognised retirement fund on the terms set out in the Staff Regulations. ► Medical insurance will equate to an emolument that is not immune from legal action under Article 5 of the Headquarters Agreement. ► In respect of medical insurance, the word "families" is not used elsewhere in the Staff Regulations. For clarity, we would suggest that terms such as "dependants" and "spouse or partner" are used. In addition, the extent of the medical insurance cover to provided is not clear, so additional confirmation as to the level of cover could be provided.
8.2	Staff members shall not be granted sick leave for a period of more than 3 consecutive days and more than a total of 7 working days in any calendar year without producing a medical certificate.	► The Holidays Act provides that where an employee is absent due to sickness or injury for three or more calendar days then the employer can request proof of sickness or injury. ► Such proof may be requested for absences of less than three calendar days where the employer meets the employee's reasonable expenses in obtaining the proof.	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
8.3 Staff members shall be granted certified sick leave not exceeding 12 months in any 3 consecutive years. The first 6 months shall be on full salary and the second 6 months on half salary, except that no more than 4 months on full salary shall normally be granted in any period of 12 consecutive months.	► After six months service, employees are entitled to five days' paid sick leave per 12 month period. These days can be accrued up to a maximum of twenty days' paid sick leave.	► 12 months is an exceptionally generous sick leave entitlement. ► The sick leave provisions, as they currently stand are also inconsistent with clause 10.3 regarding separation from service by reason of incapacity. Normally an employer would have difficulty terminating the employment of an employee who had outstanding paid sick leave entitlements.
8.4 Staff members are entitled either to parental leave under the New Zealand Parental Leave and Employment Protection Act 1987, or to the parental leave provided in paragraphs 8.6 or 8.7 below.	Parental leave includes the following types of **unpaid leave** (some of which can be shared with a spouse/partner if they are also eligible). ► Maternity **leave of 16 continuous weeks** may start up to six weeks before the expected date of birth or adoption. **Special leave** of up to 10 days can be taken by a mother before maternity leave for reasons connected with pregnancy (e.g. antenatal checks). ► **Partner's/paternity leave (where a spouse/partner is an** employee**)** of either one week (for a spouse/partner with six months eligible service), or two weeks (for a spouse/partner with 12 months eligible service). Partner's/paternity leave can be extended in certain circumstances, if parental leave payments are transferred from a mother to an eligible spouse/partner. Partner's/paternity leave is additional to the period of maternity and extended leave.	► It should be clear in the Staff Regulations as to whether the employee gets to choose between the two types of leave or whether this choice is made by the Executive Secretary. This is specified to be an election in paragraph 8.5, but this should also be stated clearly in paragraph 8.4.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
	► **Extended leave of up to 52 weeks** is available for employees with 12 months eligible service. It can be up to 52 continuous weeks, less any maternity leave taken, and is available in the 12 months after birth, or date the employee assumes the care of a child they intend to adopt. Extended leave may be shared by both eligible parents, but the total leave taken must not be more than 52 weeks (including maternity leave and paid parental leave). Extended leave can start any time after the end of maternity or partner's/paternity leave. Each kind of leave must be taken in one continuous period. It is possible to finish a period of maternity or paternity leave, go back to work, and then take extended leave later. However, the right to extended leave ends when the child is one year old, or in the case of adoption, one year after gaining care of a child. **Paid parental leave** is available to female employees who give birth to a child, or to either parent where a couple has assumed the care of a child under six they intend to jointly adopt. An employee may transfer all or part of their paid parental leave to their spouse/partner as long as they are also eligible. If they meet either the six or 12 month eligibility criteria, an employee is entitled to paid parental leave for 16 weeks. The maximum level of payment is currently $516.85 per week before tax. Some employment agreements include parental leave provisions which are more favourable than those provided by law.	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
8.5 After one year of employment in the Secretariat, staff members who elect not to use the entitlement in paragraph 8.4 above shall be entitled to maternity leave. On the basis of medical advice that the confinement will probably take place within six weeks, staff members shall be entitled to be absent from duty until eight weeks after confinement. During this period staff members shall receive pay at a rate equal to their average pay for the last 12 months and corresponding allowances.		► Essentially, this offers 14 weeks of paid leave, six of which need to be taken prior to birth (assuming that birth takes place on the due date) to receive the full entitlement. Another option may be to allow an employee more flexibility around when the leave is taken by allowing employees to take 14 weeks, but not putting in place a before or after the date of confinement restriction.
8.6 Paid parental leave of 8 weeks is available to staff members who elect not to use the entitlement in paragraph 8.4 above and who as part of a couple have assumed the care of a child under six they intend to jointly adopt.	► The same leave rights as those available to a parent/parents who give birth are afforded to a parent/parents who have adopted a child in New Zealand. There is no need for the adoptive parent to be "part of a couple."	► We would recommend that this provision be amended so that a parent adopting a child as a solo parent would also be entitled to take this leave.
8.7 Staff members shall be entitled to bereavement leave upon the death of a family member or relative, up to a maximum of 3 days in any calendar year.	► The Holidays Act 2003 provides for two separate entitlements to bereavement leave after six months' employment: ► On the death of an immediate family member, three days' paid leave. "Immediate family members" are the employee's spouse or partner, parent, child, sibling, grandparent, grandchild or the spouse's or partner's parent. Where there is more than one bereavement, the employee is entitled to three days' bereavement leave in respect of each death. ► In the event of a death outside the immediate family that causes a person to suffer bereavement, up to one day's paid leave may be taken if the employer accepts that the employee has suffered bereavement. ► The New Zealand entitlements are on a "per bereavement" rather than calendar year basis.	► We recommend that the bereavement leave provisions are revised to provide "per bereavement" leave rather than restricting it to a calendar year basis. ► As it stands, if an employee's mother died in December and father in January, the employee would get six days' leave, but an employee who suffered the same bereavements in March and April would only get three days.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
8.8 In the event of death of a staff member following illness or surgery not resulting from an accident covered by the appropriate insurance, the right to salary, allowances and other corresponding benefits shall cease on the day on which death occurs, unless the deceased leaves dependants, in which case these shall be entitled to mortality allowances and return travel and removal expenses to country of origin or former residence at the expense of the Commission.	► The right to contractual benefits in New Zealand would terminate on the death of an employee, with no residual benefits owed to dependants, other than those provided for under an appropriate assurance scheme or superannuation scheme.	► As set out above, in most cases the employee's spouse or partner will not be included in the definition of "dependants" under the Staff Regulations. If it is intended that this benefit also be payable to a spouse, then it should be clearly stated.
8.9 The above mortality allowance for death shall be calculated in accordance with the following scale: Years of Service Months of Net Base Pay Salary Following Death ► Less than 3 years 3 months ► 3 years and more, but less than 7 years 4 months ► 7 years and more, but less than 9 years 5 months ► 9 years and more 6 months	► No equivalent provision.	
8.11 The Commission shall pay for shipment of the staff member's body from the place of death to the place designated by the next of kin.	► No equivalent provision.	► We suggest that an alternative term to "shipment" be used, such as "transport" or "transfer".
Regulation 9: Travel		
9.1 All official travel shall be authorised by the Executive Secretary in advance within the limits of the budget, and the itinerary and travelling conditions shall be those best suited for maximum effectiveness in the fulfilment of duties assigned.	► No equivalent provision.	

Draft Staff Regulations	NZ Law	Commentary/Recommendation
9.2 Prior to official travel, staff may request a travel allowance in advance. Staff may use Secretariat credit cards or have actual and reasonable expenses refunded.	► No equivalent provision.	► Ideally, there should be a process to ensure that travel allowances provided are sufficient and that they are provided for the same purposes (e.g. a per diem for food, laundry etc.). If the reference to travel allowances is the ICSC set UN allowances, then this should be stated. ► Equally, the Commission may wish to set out some of these provisions in a policy rather than the Staff Regulations themselves.
9.3 PREVIOUS: Economy class shall be utilised for duty air travel, except that Business Class may be used for flights of four hours or more. PROPOSED: Economy class shall be utilised for duty air travel, except that Business Class may be used for travel of nine hours or more. *Explanation: More in line with UN and New Zealand regulations.*	► No equivalent provision.	
9.4 First class may be utilised for duty land travel, but not for travel by sea or air.	► No equivalent provision.	
9.5 Following completion of a duty journey, staff members shall repay any travel allowances to which, in the event, they were not entitled. Where staff members have incurred expenses above and beyond those for which travel allowances have been paid, they shall be reimbursed, against receipts and vouchers, as long as such expenses were necessarily incurred in pursuit of their official duties.	► No equivalent provision.	► Further clarification is required around what it means to be "entitled" or "not entitled" to a travel allowance. ► A travel policy should also detail which expenses will be reimbursed by the Commission and which expenses should be funded by the employee.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
9.6 On taking up an appointment internationally recruited staff members shall be eligible for: a) payment of economy class air fares (or equivalent) and travel allowance for themselves, their spouses and dependants to Wellington; b) an Installation Grant calculated on the basis of the prevailing United Nations rate; c) payment of removal costs, including the shipment of personal effects and household goods from place of residence to Wellington, subject to a maximum volume of 30 cubic metres or one international standard shipping container, d) payment or reimbursement of sundry other expenses related to relocation, including insurance of goods in transit and excess baggage charges subject to the prevailing relevant United Nations rules. Such payments shall be subject to prior approval by the Executive Secretary.	► No equivalent provision.	
9.7 Staff members who, in the course of their duty, are required to use private motor vehicles for official travel purposes shall, with the prior authorisation of the Executive Secretary, be entitled to receive a reimbursement of the costs involved in line with that available to members of the Government Service in New Zealand. The costs associated with normal daily travel to and from place of work shall not be reimbursed.	► No equivalent provision. ► The norm in New Zealand would be for mileage to be reimbursed at rates set by the Inland Revenue Department (currently 74c per kilometre)	► The IRD mileage rates are widely used, so we would suggest that this rate also be adopted by the Commission.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
Regulation 10: Separation from Service		
10.1 Staff members may resign at any time upon giving three months' notice or such lesser period as may be approved by the Executive Secretary or the Commission, as the case may require.	► There are no statutory notice periods in New Zealand. Notice periods are governed by contract and where no notice period is set out a reasonable notice period is implied.	
10.2 In the event of a staff member resigning without giving the required notice, the Commission reserves the right to decide whether repatriation expenses or any other allowance shall be paid.	► No equivalent provision.	► For clarity, it should be clearly set out whether this includes all of the repatriation amounts described at clause 10.5 or not.
10.3 Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he or she deems this to be for the benefit of the Commission due to restructuring of the Secretariat or if he or she considers that the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service PROPOSED addition, *provided the staff member has received reasonable opportunity to improve his or her performance. In the case of serious misconduct by a staff member that threatens the organisation or the organisation's staff members (e.g. criminal offence, theft, intentional breach of confidentiality), appointment of the staff member may be terminated without prior warning*.	► In New Zealand a permanent employment agreement cannot be terminated without a justifiable reason. ► Usually employment agreements are silent as to the grounds for giving notice, the statutory rules will determine when and how any such terminations will occur. ► No such termination can take place without appropriate procedural steps having been taken. ► Employment can be terminated without notice (summary dismissal) in certain circumstances, but a reasonable process must still have been followed prior to termination taking place.	► As set out above, the incapacity parts of this provision are inconsistent with the lengthy paid sick leave provision. ► Given the procedural and substantive dismissal requirements in New Zealand, we recommend that the provision requiring a reasonable opportunity to improve performance be incorporated. ► We also recommend that provision be made to dismiss employees summarily (i.e without providing the three months' notice) in cases of serious misconduct. The terminology of "gross dereliction of duties" could be used as this accords with clause 10.4.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
10.4 In the event of separation from service with the Secretariat, staff members shall be compensated at a rate of one month base pay for each year of service, beginning the second year, unless the cause of termination has been gross dereliction of duties imposed in Regulation 2.	► There is no statutory right to a "separation payment" or redundancy payment in New Zealand other than what is provided for in the employment agreement. ► It is fairly common, especially in the public sector, for employment agreements to include redundancy entitlements. A service related entitlement (e.g. four weeks for the first year of service and two weeks for each year thereafter) is common, as is an upper limited, with 12 or 26 weeks being the most common.	► This entitlement is generous, as it applies more widely than in a redundancy situation (i.e. also in cases of misconduct, and poor performance). ► We suggest that the Commission consider whether it would wish to offer a payment in these circumstances. ► We also suggest that the Commission consider including an upper limit, such as 6 months' pay.
10.5 On separation from service, a staff member shall, subject to Regulation 10.6 below, be entitled to the following: a) payment of economy class air fares (or equivalent) to the staff member's country of origin or former residence, for the staff member and dependent members of his or her family; b) payment of removal costs, including the shipment of personal effects and household goods from place of residence in Canberra to the country of origin or former residence, subject to a maximum volume of 30 cubic metres or one international shipping container; c) a repatriation allowance generally consistent with United Nations practice.	► No equivalent provision.	► We have amended the "Canberra" reference to "Wellington". ► We recommend that "dependent members of his or her family", be replaced with a consistent definition, such as dependants and his or her spouse or partner because it is unclear how this provision differs from the dependants and family references elsewhere in the Staff Regulations.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
10.6 At the discretion of the Executive Secretary, the right to the repatriation expenses provided for in Regulation 10.5 may be cancelled or reduced appropriately if: a) less than one year has elapsed between the date of taking up the appointment and the date of separation from service; b) the reason for separation from service was termination of employment due to gross dereliction of duty; c) more than six months has elapsed between the staff member's separation from service and his or her return to his or her country of origin or former residence; d) less than six months has elapsed since the staff member last visited his or her country of origin or former residence on home leave at the expense of the Commission; or e) the staff member has applied for or received status as a permanent resident of the host country.	► No equivalent provision.	► We recommend an amendment stating that any separation from service payment paid is inclusive of all benefits and entitlements a staff member may have and no additional payment will be owing on termination. ► This is important as Commission is not exempt from legal claims relating to salaries and emoluments. ► This clause is included in Regulation 1.11 of the CCAMLR Staff Regulations.
Regulation 11: Temporary personnel under contract		
11.1 The Executive Secretary may contract temporary personnel necessary to discharge special duties in the service of the Commission. Such personnel shall be classified as additional help and may be paid on an hourly basis. 11.2 Persons in this category may include translators, interpreters, typists, and other persons contracted for meetings, as well as those whom the Executive Secretary contracts for a specific task. Whenever possible, persons resident in the host country shall be utilised in such cases.	► New Zealand law differentiates between employees (who may be employed on a casual basis) and contractors. The primary differences between these two relationships are that the minimum benefits of employment (e.g. an employment agreement, minimum wages, holiday entitlements, the right to have tax deducted at source and rights in respect of unjustified dismissal and unjustified disadvantage) do not apply to contractors.	► The Commission will need to consider whether these individuals are being engaged as casual employees or contractors (work of this nature could, in principle, be resourced in either way). ► If the individuals are being engaged as contractors, then the Staff Regulations should not apply to them. If they are being employed as casual employees, the various benefits under the Staff Regulations to which they will not be entitled should be clearly set out.

Draft Staff Regulations	NZ Law	Commentary/Recommendation
Regulation 12: Application and amendment of regulations		
12.1 Any doubts arising from application of these Regulations shall be resolved by the Executive Secretary following consultation with the Chair of the Commission.	► IEAs in New Zealand must contain provisions about how to resolve an employment relationship problem and the right to bring a personal grievance within 90 days. ► The Employment Relations Authority, Employment Court, Court of Appeal and Supreme Court have jurisdiction in respect of employment disputes.	► We would recommend that a provision be included about how the Executive Secretary will resolve any concern he or she may have under the Regulations.
12.2 All matters not foreseen in these Staff Regulations shall be brought to the attention of the Commission by the Executive Secretary.		
12.3 Subject to the provisions of the Convention, these Regulations may be amended by the Commission in accordance with its Rules of Procedure.	► Generally, any changes to employment agreements must only be made with an employee's consent and following a period of consultation.	► The Commission should carefully consider changing any provision regarding salaries, wages and emoluments without getting staff members' consent, given the exemption to the immunity that exists in Article 5 as discussed above.
Additional provisions		
The Regulations do not currently contain any reference to steps that the Commission to ensure the health and safety of Commission employees or health and safety obligations that employees must comply with.	► The Regulations do not currently contain any reference to steps that the Commission to ensure the health and safety of Commission employees or health and safety obligations that employees must comply with.	► The Regulations should include reference to steps that the Commission should take to ensure the health and safety of Commission employees or health and safety obligations that employees must comply with.

EY | Assurance | Tax | Transactions | Advisory

About EY

ey.com