Comments on the Report of the Fair Pay Agreements Working Group (FPAWG)

Introduction

1. This document provides an overview of the FPAWG report in terms of:

    a. the practical implications of implementing FPAs.
    b. possible future changes to specific conditions of employment that may arise from bargaining for an FPA, and
    c. a possible alternative approach

2. The FPAWG report recommends the introduction of FPAs. These will set minimum terms and conditions of employment for a specific sector, industry or occupation. Only workers may initiate FPAs but the contents will be negotiated by worker and employer representatives, or set by an independent authority if agreement cannot be reached.

3. The following analysis identifies a wide range of concerning issues arising from the FPAWG report. It concludes that FPAs will not deliver the expected benefits, and that they should not be introduced at all. Added to this is the transaction costs of introducing FPAs then removing them again on the inevitable eventual change of government.

4. In the event that the Government elects to proceed with FPAs in some form, it was the view of the employer members of the FPAWG that a voluntary approach would provide a more balanced approach than the recommended one. The employer members of the FPAWG have suggested an alternative to the approach taken in the FPAWG report; this is included in the analysis.

The FPAWG report promotes equality over productivity and growth

5. The FPAWG report is couched in terms of preventing a "race to the bottom" in terms of wage and conditions of employment in highly competitive industries. However, the report also recognises that while sector and industry-based approaches to collective bargaining may assist in reducing inequality they are less effective in terms of economic productivity, growth and prosperity. For example;

    "The difference in wages found by the OECD may also signal higher productivity in companies with enterprise level bargaining than those in a context with a high degree of centralised bargaining" [1]

    and

    "the evidence in the research literature suggests wages tend to be less aligned with labour productivity in countries where collective bargaining institutions have a more important role." [2]

[1] FPAWG Report, page 16
[2] FPAWG Report, page 17

6. Somewhat paradoxically, while acknowledging New Zealand's relatively poor productivity the FPAWG's recommendations appear to promote equality over productivity and growth. While this makes little sense economically, it is consistent with the Labour Party Policy Platform (May 2017) which states:

> *"Our vision of a just society is founded on equality and fairness. Labour believes that social justice means that all people should have equal access to social, economic, cultural, political, and legal spheres regardless of wealth, gender, ethnicity, sexuality, gender identity, or social position. Labour says that no matter the circumstances of our birth, we are each accorded equal opportunity to achieve our full potential in life. We believe in more than just equal opportunities—we believe in equality of outcomes".*

7. The report does not identify possible other options to address the "race to the bottom" argument, e.g, the targeted use of tools such as the minimum wage and improved enforcement. Nor does the report identify the fact that New Zealand's ever-increasing minimum wage, and strong underlying minimum employment code, is one of the most generous in the world. Nor does it examine New Zealand's nearly 100 years experience of centralised bargaining, culminating in two decades of industrial and economic disruption. Instead the report is based almost entirely around justifying the adoption of FPAs as the primary mechanism for managing employment issues.

FPAs are awards by another name

8. The key features of the proposed FPA system replicate the central aspects of the award system in existence prior to 1991. The main ones are discussed below.

Industry or occupation

9. The centralised collective bargaining system that existed prior to the introduction of the Employment Contracts Act 1990 was based on national occupational awards. The Government has said, and the FPAWG has recommended, that Fair Pay Agreements may take the form of industry agreements or occupationally based agreements, or both. At face value, an industry agreement would cover everyone in it, from chief executives, to accountants, to HR staff to operational staff.

10. However, this is patently unworkable. For a start, chief executives and accountants etc are represented in every industry. Setting a value on them in one industry will simply distort the value of their work in other industries and disrupt the competitive labour market for such skills. This makes it much more likely that "industry" agreements will actually cover occupations (e.g., all drivers), or subsets of occupations (e.g., city bus drivers). This is exactly how the award system operated prior to 1991.

11. That said, no occupation is completely confined to one industry or sector. Nurses for instance are found in hospitals, schools and factories, and so are carpenters and electricians. Taking account of the highly variable realities between these different environments will further complicate matters.

Coordination

12. Under the award system, unions were coordinated by the Federation of Labour and Council of State Unions (later merged into the CTU) while employer associations were coordinated by the NZ Employers Federation (now BusinessNZ). The same basic model will apply under the proposed system under which it is recommended that the "social partners" (BusinessNZ and the CTU) coordinate industry bargaining representatives.

Coverage

13. Unlike awards, FPAs will cover all workers (not just employees) in the designated occupation or industry. This will include the likes of labour hire workers and dependent contractors. Imposing an employment model on the currently commercial approaches adopted by such groups is liable to damage if not destroy emerging global trends towards the "gig" economy, including such things as app-based work (eg Uber). A failure to adapt to such trends arguably will exacerbate New Zealand's mediocre national productivity, and actively opposing emerging trends will result in accelerated destruction of value and opportunities. With respect to coverage, FPAs will be "awards on steroids".

Settlements

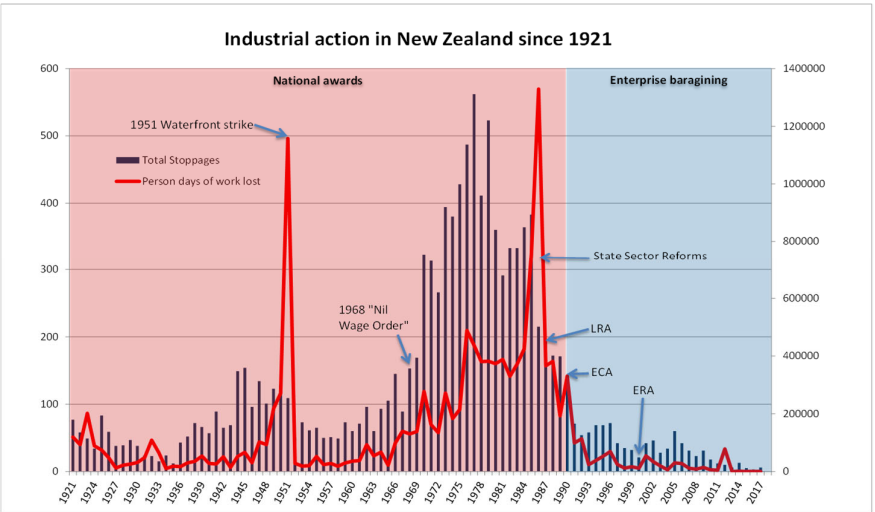
14. The FPAWG report's recommendations also contain aspects of the pre-1990 award system that make significant industrial action and economic disruption not only more likely, but almost certain.

15. Under the award system, settlements became more and more conservative in order to enable the majority of businesses to cope with negotiated or arbitrated changes. Dissatisfied with low outcomes, workers and their unions put pressure on individual employers for "above award" settlements.

16. Following the infamous "nil wage order" of 1968, unions began pursuing "above award" deals outside of the prohibition against strike action. It was this second tier bargaining that gave rise to the phenomenally high level of strikes and lockouts during the 1970s and 80's.

17. History (and reality) suggest that FPAs will need to be similarly conservative, which will create pressure for extra increases through enterprise level bargaining, thus recreating the ingredients of the disastrous industrial environment of the 1970s and 80s.

18. Flying in the face of history, the proposed FPA model openly envisages "above FPA" deals being used to supplement FPAs. The diagram below shows what happened in the 1970s and 80s, while Appendix 1 illustrates the historical lesson.



19. However, if, as unions and the government believe, FPAs do in fact become the vehicle for significant changes to wages and conditions, it is almost certain that many smaller businesses will be consumed, leaving mainly the larger players standing. This opens the door to increased monopolistic behaviours by larger companies. Either way, the prospects are bleak for smaller players and their employees, as well as for those in the regions.

> **Electronics manufacturer** - *"We will be forced to go to greater levels of automation and reduce the number of employees. This will make it harder for relatively unskilled people to get jobs."* (source: Export NZ)

Disputes

20. Under the award system, disputes were heard in the Arbitration Commission (and its predecessors) by a judge assisted by assessors selected by employers and unions. The FPAWG report recommends that failed mediation be referred to an independent authority, possibly the Employment Relations Authority, which may be assisted by "experts" or panels.

Strikes

21. Under the award system strikes were not permitted in pursuance of a settlement, by virtue of trade unions being registered under the Trade Unions Act 1908 which bound unions to the award system.

22. While the FPAWG report recommends that strikes not be permitted in relation of bargaining for an FPA, it does envisage strikes being permitted for matters not directly related to FPA bargaining. While lacking specifics, this appears to open a door to strikes for non-collective bargaining issues, such as those currently occurring in France, over general concerns with the state of the economy and the government's management of it.

23. Strikes over political, economic and social issues are currently not permitted in New Zealand. Permitting them would be a direct breach of the ILO Freedom of

Association and Right to Organise Convention 1948 (C87) [3]. New Zealand is bound to the principles of C87 by both its membership of the ILO and by section 3 of the Employment Relations Act 2000[4].

Relativity issues will drive up prices

24. Under the award system, awards were negotiated in a strict hierarchy based on "fair relativity"; settlements were reflective of the perceived historical relationship between one award and another.

25. The private sector Metal Trades Award traditionally set the scene for all other trades occupations. Settlements would not disturb the overall wage relativity between awards. In the state sector, secondary school teachers headed a long chain of relativities that ended with school audiologists. Considerable care was taken to ensure that settlements did not disturb the overall wage relativity between awards.

26. Occupational relativities disappeared as the basis for wage setting upon the introduction of the Employment Contracts Act in 1991, and awards as such vanished. However, the FPAWG recommendations would reinstate the concept of fair relativity, because an FPA for truck drivers will not escape comparison with similar agreements for bus drivers or train drivers; agreements for retail workers will be compared with those for bank tellers and so on.

27. History suggests that once the first FPA is settled, other occupations will formulate claims based on the perceived value of the precedential FPA. Unchecked this will promote wage inflation and spiraling prices.

28. Industrial pressure played a large part in driving the Muldoon government to introduce price controls in the early 1980s and caused the near collapse of the economy in 1983, when the "wage freeze" was lifted and wages claims spiraled out of control. Mortgage interest rates and food prices spiked and created enormous pressure on workers and employers alike.

29. Nowhere in its report does the FPAWG deal with the critical issue of relativities although it does recognise that the advent of pay equity claims under the forthcoming Equal Pay Amendment Bill will add a new dimension, as pay equity settlements will recalibrate historical relativities between classes of work.

30. A female dominated group that achieves a pay increase as a result of being compared with a male dominated group doing work of equal value will in future be "pegged" to that male dominated group.

31. The proposed new pay equity legislation requires that claimant group wages be kept in line with the comparator group once a pay equity settlement is achieved. If the comparator group's wages are subsequently adjusted by an FPA settlement, the pay

[3] Business New Zealand's views on the right to strike may be found here.

[4] *"The object of this Act is to - (b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively."*

equity claimant group's wages will have to be similarly adjusted even though they are not covered by an FPA.

32. FPA settlements therefore may cause relativity "ripples" to flow into sectors, industries and occupations not covered by FPAs, causing relativity issues in those areas, and putting pressure on employers and their businesses to respond to stimuli they cannot control.

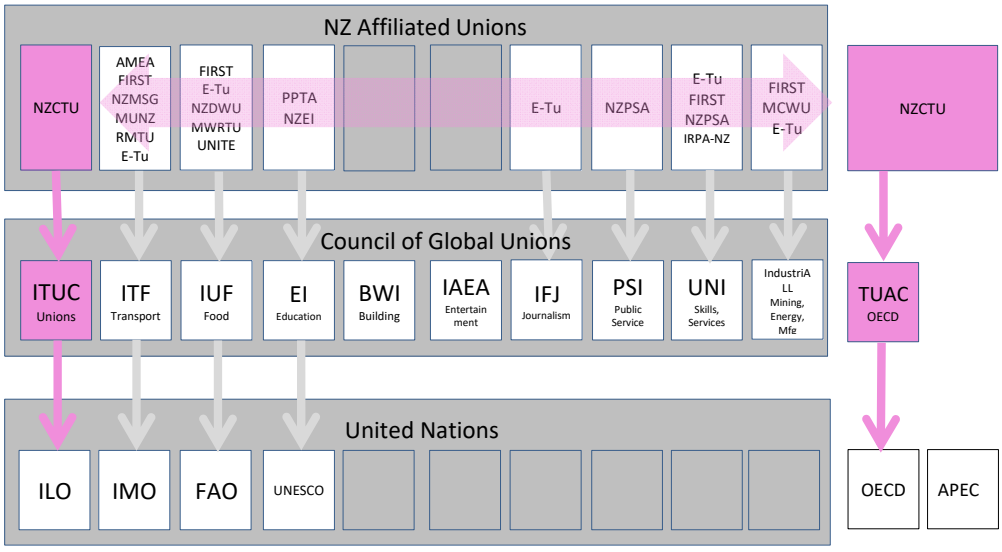
FPAs will disenfranchise unions

33. Under the award system, demarcation disputes between unions were common due to strict rules about which unions covered which work. At times these disputes caused as much disruption as strikes over collective bargaining. The FPAWG's recommendations would enable unions (on behalf of workers) to nominate the coverage of a proposed FPA. Over time, this will almost certainly create tensions between the boundaries of FPA coverage and the unions that negotiate them, recreating demarcation as an issue.

34. There are currently around 135 unions in New Zealand. Tensions already exist between many of the less than 40 unions that are affiliated to the NZ Council of Trade Unions and the nearly 100 unions that are not; the Resident Doctors Association is a notable example as evidenced by media attacks from the CTU[5].

35. As can be seen in the diagram below, several of the CTU's major New Zealand union affiliates are strongly linked to the international union movement, and thence into the United Nations and OECD. Affiliated unions enjoy strong support in these bodies.

Union Affiliations



36. Opportunistic claims for FPAs by CTU affiliates could easily force non-affiliated domestic unions into a corner, particularly those that currently are associated with a

[5] https://www.stuff.co.nz/national/politics/109799092/as-junior-doctors-strike-leaked-email-shows-bitter-rivalry-between-unions

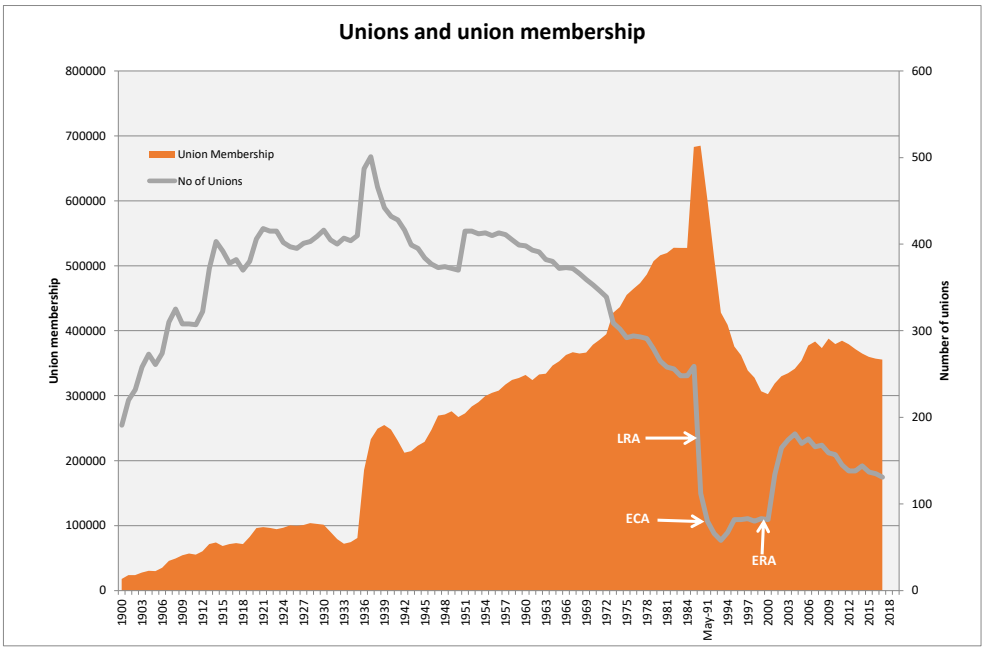
single employer. There are many of these in New Zealand, in private schools, local government, ports and private sector companies. These so called "yellow dog" unions are traditionally disavowed by internationally affiliated unions.

37. As an example, a union that is not represented in all ports, but which has sufficient members to initiate an FPA, can effectively "take over" the conditions of the ports in which they do not have a presence. This could easily disenfranchise other unions currently present, and lead to levels of internecine union conflict not present since before the 1990s.

38. To further illustrate this point, the Public Service Association is one of 30 unions currently registered as covering Government Administration and Defence[6]. It is the only one of that group affiliated to the CTU and to its global counterpart, Public Service International. It is New Zealand's largest union with over 50,000 members. It therefore is capable of meeting the 1000-person or 10% threshold for triggering a claim for, say, clerical workers.

39. Doing so, however, could disenfranchise the remaining 29 public sector unions with respect to clerical workers. It would have a similar effect on private sector unions that currently cover clerical workers. This effect could be repeated for all occupations covered by the PSA.

40. Similar effects could be read into the coverage of the FIRST Union which is registered as covering Transport and Storage; Accommodation, Cafes and Restaurants; Cultural and Recreational Services; Construction, Finance and Insurance and Property and Business Services (the widest registered coverage of all New Zealand unions).



[6] http://www.societies.govt.nz/cms/registered-unions/register-of-unions

41. That said, it is possible that this deleterious effect could be reversed (albeit over a period of years). As can be seen in the graph above, unions reached peak numbers during the 1980s, ironically at the point awards began to decline in effectiveness. Numbers declined rapidly after, first, the introduction of the "1000-member" rule under the Labour Relations Act 1987 and, second, the advent of enterprise bargaining under the Employment Contracts Act 1991.

42. The high numbers of the 1980s were largely a reflection of the fact that there was typically a union for each occupational award. A proliferation of FPAs therefore might reverse the initial impacts of FPAs on unions.

43. However, political reality suggests this is unlikely, as FPAs are unlikely to survive a change of government. The negative impacts on unions discussed above therefore are the more likely effect.

FPAs are a recipe for economic decline

44. Increased productivity in economic terms requires an increase in the *value* of the productive economy, not simply more output. In these terms, the FPAWG report is a recipe for economic decline, in both pure economic terms and in the circumstances of the average worker and employer. There are several reasons for this view.

45. First, history suggests that wage gains for workers via FPAs will be constrained by a realistic need to ensure that increases are sustainable for as many businesses as possible. History also suggests that this will increase pressure for enterprise level "top ups", which in turn will increase the incidence of industrial action (depriving workers of incomes and employers of production). See Appendix 1.

46. History therefore suggests that FPAs will do little or nothing to improve productivity. Instead they will reduce it. This is primarily because the kinds of changes unions have indicated they seek to make to workers' conditions will add cost to employers and reduce the burden of work on employees. Unions have been pushing for shorter working weeks for decades[7]. In simple terms, unions are arguing for "more money and less pressure".

> **Food manufacturer** - "*We may need to look at automation to stay competitive. This wouldn't be ideal for us, because automation would undermine our key point of difference, which is producing handcrafted goods. This would also take time due to the fact we have already invested in a brand-new manufacturing plant, and the additional capital required to automate further would be a stretch on top of the significant investment we have already made.*" (source: Export NZ)

47. However, outcomes such as higher wages, and shorter, more flexible, "family friendly" hours do not of themselves add up to improved productivity. Rather, improved productivity is likely to come from smarter work practices (created of necessity by employers in the main) and increased investment in technology (probably also driven of necessity by employers). This was also recognised by the FPAWG who said:

[7] https://www.stuff.co.nz/business/11081406o/worklife-balance-an-issue-thats-time-has-come

> *"we note raising wage floors may make capital investment more attractive for firms; that is, it may speed up employer decisions to replace some jobs with automation."*

48. When it came to increasing productivity, however, the FPAWG took an overly simplistic view, saying that collective bargaining:

> *"would have the potential to increase aggregate productivity by setting higher wage floors and better conditions; forcing unproductive firms to exit; and lifting overall productivity of the sector."*

49. In other words, the FPAWG felt that productivity could be improved by compelling payment of higher wages thus forcing weaker firms out of business while the strongest (usually also the biggest) survive.

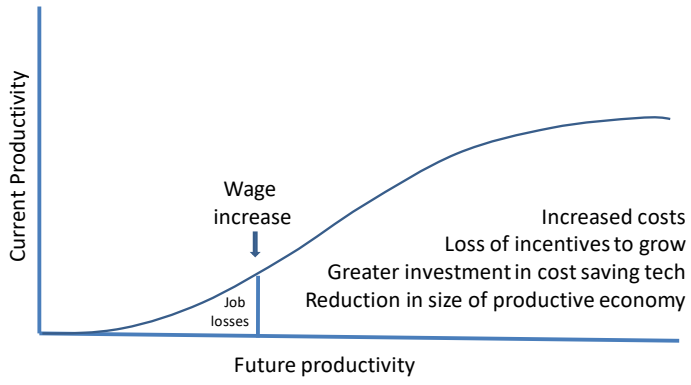
50. A likely early effect of this is an increase in the ability of stronger firms to develop monopolistic strategies to consolidate their position. While this may reduce competition that leads to a "race to the bottom", it paradoxically also strengthens the ability of the stronger firms to dictate terms, including lower wages. It is arguable that smaller firms are often relatively more innovative than their larger counterparts, whereas monopolies often "rest on their laurels". Being essentially anti-competitive, they can simply charge (and pay) more.

51. Irrespective of which outcome emerges, nowhere in the world does reducing competition result in improved productivity or sustainable economic growth. And while the result of the FPAWG's thinking may improve productivity *statistics* on a per business basis, it does nothing for the workers who lose their jobs or for the size of the economy.

> **Electronics manufacturer** - *"I think after the wages increases go through, it will be cheaper to manufacture in Australia and our competitive advantage in New Zealand will be gone. This is the first time in my long manufacturing and exporting career that this will be the case"*

52. Ultimately, while (according to the FPAWG report) FPAs may reduce wage-based competition they will not improve the ability of an employer to pay the increased costs, unless they can commensurately improve productivity. Imposing increased costs usually incentivises employers to restructure costs and take on debt, at least in the short term. A focus on increased productivity is usually delayed in such circumstances. Worker layoffs are also an all too common by-product of such exercises. The graph below illustrates this effect.

The price of imposed increases

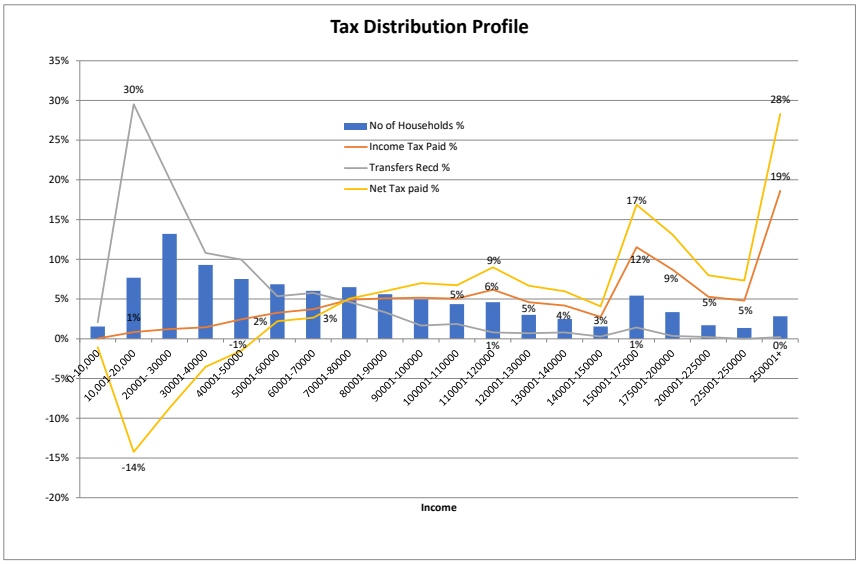


Workers will not get the full benefits of increases

53. An unfortunate by-product of arbitrary wage increases (whether achieved via FPAs or other means) is that they are likely to be diminished by the application of abatement criteria attached to government subsidies such as Working for Families, meaning many workers will not reap the full benefits.

54. While this occurs now, it will be exacerbated by FPAs. Since settlements will be imposed generally upon all workers and employers there will be little ability to ameliorate the abatement effects o pay increases with work-arounds such as improved non-monetary benefits for individuals.

55. Any such workarounds will simply add further cost, further hurting productivity.



Source: NZ Treasury

56. As shown in the graph above, low income earners are the greatest recipients of income subsidies and thus the group paying the lowest (in some cases negative) net tax. They therefore are the group who will reap the lowest net gains from pay increases, because pay increases will be offset against the level of subsidy they receive.

57. Ultimately, introducing FPAs without addressing these issues may actually put more money in government coffers than it will in workers' pay packets.

Government will not be able to control the rate of introduction

58. While the Prime Minister has offered assurances that there will only be one or two FPAs in the first year, the report provides no means for the government to control this. This makes it quite possible that claims will proliferate once the requisite law is passed. The long list of occupations at the back of the report indicates just how many there could be.

59. Moreover, the report misrepresents the situation of low paid workers relative to the minimum wage. At page 14 the FPAWFG report states

> *"We examined the demographics of those working on or near the minimum wage – under $20 per hour"*

60. The minimum wage is not $20 per hour, or anywhere near it. Currently it is $16.50 per hour, rising to $17.70 on 1 April 2019. Using a figure of $20 inflates the number of people who are "undervalued", which in turn may increase expectations that FPAs will quickly lift wages to or above this level, a level the Government has committed to reaching only by 2021. When the need for relativities to be maintained is added, the implications for labour costs and disruption are very significant.

61. There are already strong signals that workers will not wait in a "queue" for their FPA to be settled. For instance, there are already over a dozen pay equity claims being bargained over in the state sector, and this is before the new Equal Pay Amendment Bill has been passed. Similarly, significantly increased levels of strike action in the transport and other sectors since the 2017 election hint at an impatience for results from workers who will not appreciate being "queued".

FPAs would breach international law

62. The recommendations, if enacted, constitute a clear breach of the Right to Organise and Collective Bargaining Convention 1949 (C98), to which New Zealand is bound, and which requires bargaining systems to be consistent with the principle of free and voluntary negotiation. The process recommended by the FPAWG is neither free nor voluntary. An internationally recognised interpretation of the principle of free and voluntary negotiation states;

> *"A legislative provision that would oblige a party to conclude a contract with another party would be contrary to the principle of free and voluntary negotiations",*[8]

63. Paradoxically, the FPAWG report recommended that the Government seek advice on this point[9], yet proceeded to make its recommendations anyway. The Government has already been challenged on this point, as the introduction of a duty to conclude a collective agreement in the recently passed Employment Relations Amendment Act offends the same international treaty.

64. Furthermore, New Zealand only ratified C98 in 2003, after the award system had been abolished. It had been deemed inappropriate to ratify it while the award system was in operation as awards were compulsory. The FPAWG has been remiss in not resolving concerns over this point before making its recommendations.

A voluntary approach would be better

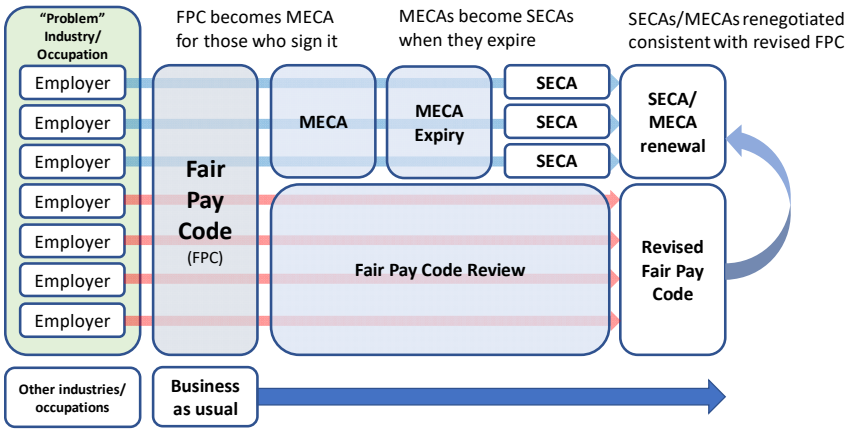
65. The discussion above leads to a view that there are few, if any, redeeming features of FPAs. The rational response to this is to conclude that FPAs should not proceed in any form.

---

[8] This is perhaps the clearest statement of the principle of voluntary bargaining, but it is not the only one. See Chapter 15 paragraphs 1313 – 1321 of the Compilation of Decisions of the Committee on Freedom of Association for more http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70001:0::NO:::

[9] FPAWG Report, page 38

66. That said, the negative impacts of FPAs stem predominantly from the compulsory and all-encompassing nature of the proposed approach. As a compromise, the employer members of the FPAWG proposed a voluntary approach to the same issues. They requested that this be attached as an Appendix to the FPAWG report by way of a dissenting view, but this was not agreed to. The employers' alternative approach is set out in Appendix 2. The diagram below illustrates how this might work[10].



67. The voluntary approach is built on the idea that "problematic" industries (in terms of undesirable labour outcomes or practices) could develop a "code of practice" setting out an agreed view of a reasonable approach to terms and conditions of employment in that environment.

68. The resulting code could be signed up to by (and would become binding on) willing employers but used as non-binding guidance by those who choose not to sign on. Over time, those employers who sign on will generate labour market pressure on wages and conditions of those who have not signed. Such pressure should dampen if not disincentivise the "race to the bottom" effect commented on by the FPAWG. Non-"problematic" industries or occupations would be unaffected.

69. In addition, the suggested voluntary approach reverts to enterprise level agreements over time, allowing control over conditions of employment to return to the workplace level after they had been "recalibrated" by agreeing to the FPA code-based conditions. This does not prevent employers from renewing their commitment to the FPA code if they choose to.

[10] MECA – Multi Employer Collective Agreement, SECA – Single Employer Collective Agreement

Detailed analysis of individual FPAWG report recommendations

The table below contains a commentary on the individual recommendations in the FPAWG report.

Phase	FPA WG Recommendation	What might happen under FPAs?
Initiation	**Only workers (unions) can initiate bargaining for an FPA** Workers/unions may nominate the sector or occupation they want an FPA to cover. The proposed boundaries of the sector or occupation may be as wide or narrow as workers see fit.	Employers will be denied any opportunity to argue whether there should be an FPA or not, or whether some aspect of an industry or sector should be covered. This gives minority groups of workers effectively unfettered ability to generate FPA bargaining for an entire sector (e.g. agriculture, transport) or industry (e.g., horticulture, viticulture, dairy, meat, textiles) or occupation (e.g. drivers, shop assistants, clerical workers).
	Two ways to initiate an FPA *Representativeness trigger* – 10% or 1,000 (whichever is lower) of all workers (union and non-union) in the sector or occupation, as defined by the workers in the initiation process. *Public interest trigger* – specific adverse labour market conditions exist in the nominated sector or occupation. Criteria to be set in law.	Either trigger allows a minority of workers in a sector or industry to initiate bargaining for an FPA, without any ability on the part of employers to argue. Employers will not be able to opt out if the proposed FPA covers them. Since workers can only be represented by unions (see Bargaining Parties phase below), this effectively means unions can initiate bargaining in any sector or industry, whether or not they have members in these. For all practical purposes, once an FPA is created, unions will control the dialogue over working conditions under the FPA. This is a classic tail wags the dog scenario, and is the same scenario that a number of European countries eg France are trying hard to get away from after many decades of constant industrial unrest and poor economic performance.
	Independent authority to verify that trigger conditions are met *Representativeness trigger* - confirm the threshold criteria are met. *Public interest trigger* - confirm	This could be either an existing body such as the Employment Relations Authority, or a new one set up for the purpose, perhaps along the lines of the Arbitration Commission that existed prior to 1991. The Australian Fair Work Commission is another example. While the representativeness trigger is

	the statutory conditions are met. Time limits for completing the verification process.	relatively straightforward, decisions over public interest are complex, even with guiding criteria. Essentially judicial bodies will be making decisions over the economic prospects of an entire industry or sector. This is economically unsound at best.
Coverage	**Occupation or sector to be defined by the parties** Workers initiating the bargaining process must propose intended boundaries of the sector or occupation to be covered by the agreement. Actual coverage to be agreed between the parties, including providing for variations in terms for geographic regions.	Over time this recommendation will generate disputes over coverage akin to the demarcation disputes of the pre-1991 award era. Since workers will set the coverage boundaries, and workers are to be represented by unions, it will very likely again become a point of contention between unions as to whose members fall under the coverage of which FPA, and therefore which union(s) have rights to bargain for that FPA. Such disputes caused as much disruption in the past as did issues over actual award bargaining. These are not issues under the current system of enterprise based bargaining.
	FPAs to cover all workers (not just employees) and all employers in sector/industry or occupation Coverage to extend to any new employers or workers after the FPA has been signed. Employers able to apply to an independent authority for a declaration of whether their business falls within the proposed/agreed coverage.	Worker is a broader term than employee. It also covers the self-employed and contractors. It also covers workers engaged through labour hire agencies. This has massive implications in sectors or industries where there is a high proportion of non-employees or workers engaged through agencies. For instance, courier and truck drivers are often owner operators. Their fundamental business models will be disrupted by requirements to conform to FPA provisions. The same will apply to family owned businesses such as farms. Seasonal businesses such as horticulture, viticulture, businesses that rely on labour hire to source workers will all be affected.
	Limited exemptions from	Provision for temporary exemptions

	FPAs Temporary (up to 12 months) exemptions may be permitted; eg for small employers, new entrants to the workforce or those returning after extended period out of the workforce.	simply means that there is no escape from an FPA once it is initiated, other than by proving that coverage does not apply. Exemptions therefore will simply be a period of remission from an otherwise inevitable outcome.
Scope	**Minimum content for FPA to be set in law** FPAs must include: • Objectives (of the FPA) • Extent of coverage • Details of wage rates and how future pay increases will be determined • Other terms & conditions of employment , including working hours of work, overtime rates, penal rates, leave, redundancy compensation, and any flexible working arrangements • Skills requirements and training commitments • Duration and expiry date of the FPA (maximum of 5 years) FPAs may include • Rules for managing the operation of the FPA including administrative arrangements for exemptions • Other matters, e.g productivity-related enhancements, provided they are compliant with minimum employment standards and other law. FPAs may take account of regional differences within industries or occupations.	Most of the recommended minimum provisions are already found in existing law. By definition, FPA conditions will override corresponding existing statutory minimum provisions in the affected industry or sector. FPAs may also act as a "Trojan Horse" for advancing several aspects of the government's election manifesto that are not already covered by, among other things, the Employment Relations Amendment Act 2018. Chief among these are redundancy provisions (currently not required by law). FPAs could be used to impose minimum redundancy compensation provisions across whole sectors, on businesses large and small, successful or marginal. This would impose commensurate contingent liabilities on the balance sheet of every business. FPAs may also cover a range of other issues, including: • the fundamental right of employers to manage their business, e.g through provisions requiring employees and unions to be involved when making important business decisions. • the ability to agree regional and other variations within sectors, which raises many issues of relativity and demarcation (both terms intrinsic to the pre-1990 award system), e.g. if Auckland is to be better treated than elsewhere, where does "elsewhere" begin? Do "Elsewherians" resolve their

		consequent angst at a sub sector, regional or enterprise level?
	Enterprise level agreements Enterprise level collective agreements may be agreed even when there is an applicable FPA but these must equal or exceed the terms of the relevant FPA. Additional provisions not within the scope of the FPA may also be agreed.	The OECD/ILO view (espoused in the FPAWG report) that the optimal model is sector based minima supplemented by enterprise level "top ups" is exactly the same "second tier bargaining" model that created the mayhem of the 70s and 80s in New Zealand. The economic reality of FPAs is that that settlements will need to reflect the capacity of the "weaker" (not necessarily the "weakest") employers to cope with the outcomes. The alternative is that only the strongest (usually the largest) employers survive, which is a recipe for monopolistic outcomes to flourish. Moreover, driving settlements to lowest common denominator levels is fine for equality of outcomes but not for productivity and is counterintuitive in preventing a "race to the bottom" because it places everyone at the bottom to start with. History indicates that it will be mainly low paid workers who seek to "top up" meagre FPA outcomes. Even worse, unlike the 1970s and 80s where unions had to "opt out" of coverage of the Trade Union Act to undertake second tier bargaining the recommendations actually promotes second tier bargaining as part of the process.
Bargaining process rules	**Good faith rules to apply** Existing bargaining processes as currently defined in the Employment Relations Act.	This is sensible.
	Time limits for negotiation of FPAs Timelines will be fixed for the initiation of FPAs and the subsequent bargaining process.	This creates an opportunity to force an opposing party into arbitration by drawing out a bargaining process. For instance, bargaining over an employer wage offer that is not acceptable to workers can be filibustered until the bargaining period expires.

		The recommendations make no provision for extension of bargaining periods, so arbitration would be the only outcome of bargaining. This would in turn increase expectations of the use of second tier bargaining to resolve outstanding issues.
	Notification requirements Minimum criteria will be set to ensure all affected employers and workers are notified of initiation of an FPA and an opportunity to be represented and informed throughout the bargaining progress.	As with representation (see Bargaining parties phase below), notification is a significant logistical exercise and will require extensive consultative mechanisms to be set up nationally and by each representative body. This will be relatively straightforward for unions who operate such mechanisms now. However no comparable infrastructure exists for employers. This will require the recreation of mechanisms that operated before the abolition of national awards in 1991.
Bargaining parties	**Parties to choose representatives to bargain on their behalf** Parties to be represented by incorporated entities. Workers to be represented by unions. Employers to be represented by employer organisations. Multiple representatives permitted Representatives to elect a lead advocate. Business New Zealand and the New Zealand Council of Trade Unions, to have a role in coordinating bargaining representatives. Representatives will have to meet minimum requirements.	This recommendation recreates the representation structure of the pre 1991 award era. Under the award system Unions were coordinated by the Federation of Labour and Council of State Unions (later merged into the CTU) while employer associations were coordinated by the NZ Employers Federation. The same model will apply under the proposed system under which it is recommended that the "social partners (BusinessNZ and the CTU) will coordinate bargaining representatives. Individual industry bodies will also need to develop or hire resources and capacity to fulfil their role as employer representatives in their industry.

	Disagreement about who is representative resolved by mediation or independent authority if no agreement.	
	Representatives must represent non-members in good faith Non-members of unions or employer/industry organisations have the right to be represented during the bargaining process. Representatives have a duty to consult those non-members throughout the process.	Good faith in this context will only be proved when it can be demonstrated that all affected employers and workers feel they have had their interests represented (whether successfully or otherwise). This will require extensive consultative mechanisms to be set up nationally and by each representative body. This will be relatively straightforward for unions who operate such mechanisms now. However no comparable infrastructure exists for employers. This will require the recreation of mechanisms that operated before the abolition of national awards in 1991.
	Workers permitted to attend paid meetings to elect and instruct their representatives Workers covered by FPA bargaining may attend paid meetings to elect their bargaining team, endorse claims and give instruction, e.g on strike action.	This effectively means all workers (employees and non-employees alike) across an entire industry will be attending multiple stop work meetings related to initiation, content of claims, conduct and progress of bargaining and ratification of FPAs. Currently only union members have rights to such meetings. Union members currently make up less than 10% of the private sector workforce. The "bargaining round" will become a period of disruption even if industrial action is not occurring. It is analogous to general elections, which occur only every three years but are nonetheless disruptive when they do.
	Costs should not fall disproportionately on the groups directly involved in bargaining Government to consider how costs should be funded, whether through Government financial support, levy, fee or other	This opens the door for the government to make good on the Labour Party's 2017 election manifesto promise to strengthen provisions relation to passing on. If costs such as delegate travel and accommodation are not to be covered directly by government, this could

	means.	easily take the form of a levy on employers (including contractors) covered by an FPA, based on the number of workers who would be covered. If this was remitted to the union bargaining on behalf of those workers it would effectively represent a defacto union membership fee for every affected worker. Given the union monopoly over FPAs, this is tantamount to compulsory unionism in its effect.
Dispute resolution during bargaining	**No recourse to industrial action during bargaining** Strikes and lockouts related to FPA bargaining will be prohibited. Strikes may be permitted over other matters which coincide with FPA bargaining.	Permitting strikes over matters that coincide with bargaining for an FPA carries connotations of strikes over political, economic and social matters, and include the right to general strikes. Such strikes are currently unlawful. Permitting them would contravene the provisions of the Freedom of Association and Right to Organise Convention 1948 (No 87) the principles of which New Zealand is bound to observe by virtue of both its membership of the International Labour Organisation and the objects of the Employment Relations Act 2000[11].
	Mediation and facilitation are the first instance options for dispute resolution Either party (or both) may refer matters relating to the proposed agreement bargaining to mediation.	This is sensible.
	Failed mediation to be referred to independent authority The independent authority may also be assisted by experts or panels	This recreates the system operating prior to 1990, where the Arbitration Commission comprised an independent judge supported by "assessors" chosen by employers and unions.

[11] Business New Zealand's views on the right to strike can be found here.

Conclusion, variation and renewal	**Ratification** Procedure for ratification to be set in law. Simple majority of both employers and workers before agreement can be signed Workers are entitled to paid meetings for the purposes of ratifying the agreement.	All employers and workers, whether employees or not, unionised or not, members of a representative organisation or not, will have to have a means of "voting" for or against the proposed settlement. The logistics inherent in enabling all workers and all employers who will be covered by a proposed FPA to participate in this process are very significant. No current infrastructure for such an exercise exists.
	No ratification required for agreements determined by independent authority Appeals permitted only on grounds of breach of process or coverage.	An agreement that is fixed by an independent authority will be final, just as awards were prior to 1991. Successful appeals on grounds of process or coverage will not change the content of an FPA.
	Concluded FPAs to be registered Registered FPAs to be publicly available	Registration mirrors the requirements of award pre 1990. Lodging copies with the government is a requirement of collective agreements now.
	Either party permitted to initiate renewal of the FPA, or variation during its term. Variation or renewal of an FPA are subject to the same initiation and ratification thresholds as the original one.	This is consistent with all other forms of collective bargaining
Enforcement	**ER Act collective bargaining dispute resolution and enforcement mechanisms apply to FPAs as well.**	The Labour Inspectorate will have their current jurisdiction and rules extended to apply to FPAs and the enforcement provisions of the Employment Relations Act 2000 will apply. This is consistent with all existing forms of collective bargaining.
Support	**Need for unions, workers and employers to be given information and support to build capacity and capability in the FPA process.** This will include	These are all significant issues given the scale and scope of the recommended changes. It will almost certainly be wasted money given the absolute commitment of opposition parties to abolish any FPA

	• Role and resourcing of the independent authority • Role and resourcing of support bodies	scheme that is implemented by the current government.

Conditions of Employment under FPAs

70. The FPAWG report deals with the rules and processes for establishing FPAs but it does not examine what may change as the result of the introduction of an FPA. There is also the question of what changes to conditions of employment might be wrought by the introduction of Fair Pay Agreements. This is not just a question of wages. The proposed rules enable far reaching changes in all other aspects of working conditions.

71. An indication of possible areas of focus can be found in those conditions of employment that have changed most since the cessation of awards in 1991[12]. These possibilities are set out in the table below. All involve significant extra costs in comparison to current approaches.

Issue	Description	Possible changes made easier by FPAs
Remuneration	Basic pay – remuneration for competently carrying out the functions of the employee's role. This includes salaries, hourly wages and piece rates.	A move towards specified paid rates and service-based increments and away from performance-based regimes. Possible move away from broad based salaries towards hourly rates or weekly wages, as these readily permit attachment of overtime, penal and other extra conditions of work-based payments.
	Taxable Allowances - compensation for specific conditions applicable to specified employees. shift allowance (shift workers) and travel allowance (where public transport is not available) are some examples. (Note:	A move towards industry or occupational allowances rather than enterprise-based ones. Also, possible location-based allowances to account for regional labour cost and cost of living differences. NB these may require adjustment independent of FPAs renewal timeframes if an FPA is a long term one (c.f. pre 1990 CoL adjustments).
	Non Taxable Allowances – typically reimbursement for costs incurred by the employee	No real change envisaged

[12] As measured by the annual *Bargaining Trends and Employment Law Update* published since 1990 by the Centre for Labour Employment and Work at Victoria University

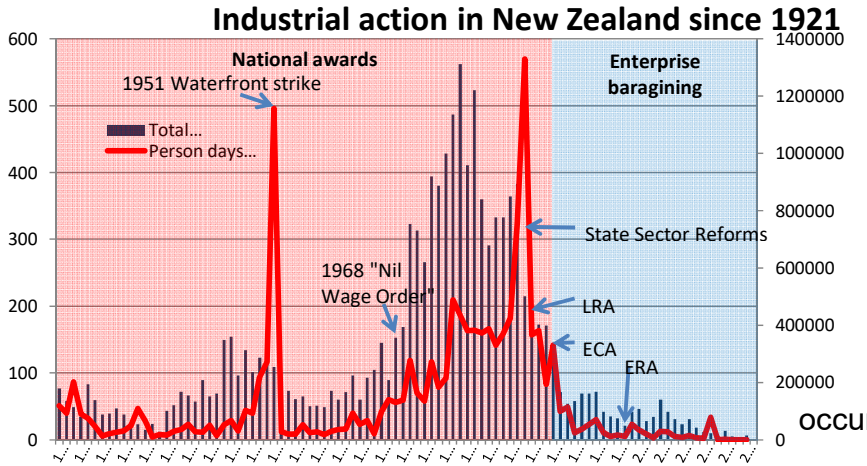
	– are not normally classified as remuneration, and are excluded from consideration as a component of RDP. Tool allowances for tradespersons are a typical example.)	
	Bonuses, commissions and incentive payments – normally paid on a one-off basis either annually or at specified intervals as recognition for agreed production/performance targets being met or exceeded. A common characteristic of such payments is the fact they can be withheld if the specified targets are not met.	A possible move away from discretionary payments towards "paid rates" on the basis that these give more certainty to workers. However this will put pressure on employers to be more conservative in pay practices, as removal of incentives that are tied to productivity may result in lower productivity at a higher than nominal labour cost.
Working hours	Ordinary Hours - The hours for which ordinary or standard pay are received each day.	A return to contractual definition of ordinary hours, shift hours, penal hours and overtime hours, each attracting different paid rates. Australian "modern awards" have resulted in huge cost increases to employers from high weekend and holiday penal rates.
	Normal Hours - The earliest and latest times within which ordinary hours may be worked. Sometimes called office hours. These are usually longer than ordinary hours, e.g. 8 ordinary hours may be worked within normal hours of 7am to 7pm	No real change envisaged, although it is possible that they may move closer to ordinary hours.
	Overtime – extra hours over and above Ordinary hours. Overtime is distinguishable from penal time in that it is contiguous with ordinary hours of work. Penal rates and overtime rates are not paid in respect of the same hours.	Increase in demands for overtime to be paid at more than ordinary time rates, e.g, pre-1990 norms were T1.5 for a period (often 3 hours) then T2 thereafter.
	Penal time – recognises the historically accepted social penalties imposed on an employee required to work on those days or at those times. Typically, penal payments are paid on weekends, on public	Increase in demands for penal rates to be paid at more than ordinary time rates, e.g, pre-1990 norms were T1.5 for a period (often 3 hours) then T2 thereafter on weekdays and Saturdays, and T2 all day on Sundays and public holidays.

	holidays and when the normal hours of work fall outside the traditional standard of 8am – 5pm.	
Leave	Statutory and contractual entitlements for annual, sick, parental and bereavement leave and public holidays	Annual and sick leave entitlements linked to working hours, with extra recognition for "non-standard" patterns. Reversal of post 1990 trends away from long service and retirement leave
Superannuation		Possible minimum requirements for employer contributions to designated schemes, whether or not an employee contributes themselves.
Redundancy	Redundancy compensation is not statutorily provided for. It is uncommon outside of collectivised/unionised workforces.	FPAs may seek to impose a minimum entitlement to redundancy compensation, possibly based on Labour's 2008 review which recommended 4 weeks for the first year of service and two weeks for each subsequent year up to a maximum of 20 years' service.
Workplace Health and Safety		Minimum requirements for elected health and safety representatives including above statute rights and protections.
Union access	Statutory rules are in place for union access	Collective agreements and FPAs may set "above statute" rules for access, heavily in favour of free access which is currently restricted to unionised workplaces.
Passing on and freeriding	Voluntary means of addressing this are provided in statute. Unions object to non-union members	Employers or non-union employees may have to pay bargaining fees or levies approximating union fees for any non-union member who is employed on the same terms and conditions as provided for in the relevant collective agreement.
Training and development	No statutory requirements for investment in training and development of employees	FPAs may seek to impose specific obligations on employers to invest in the training and development of workers. This may include specified minimum expenditure for training and development, possibly as a % of revenue.

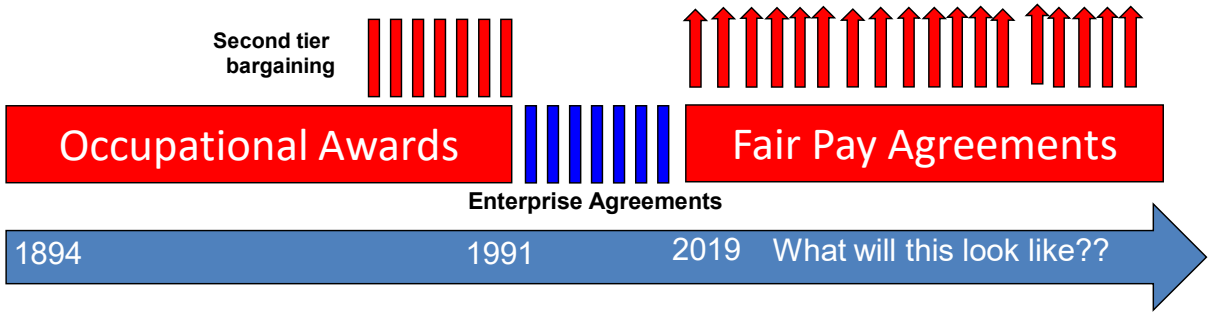
Trial Periods	These are restricted to businesses with fewer than 20 employees.	Given the general attitude of unions to 90-day trial periods, FPAs are likely to prohibit their use in the sector or industry to which the FPA applies.

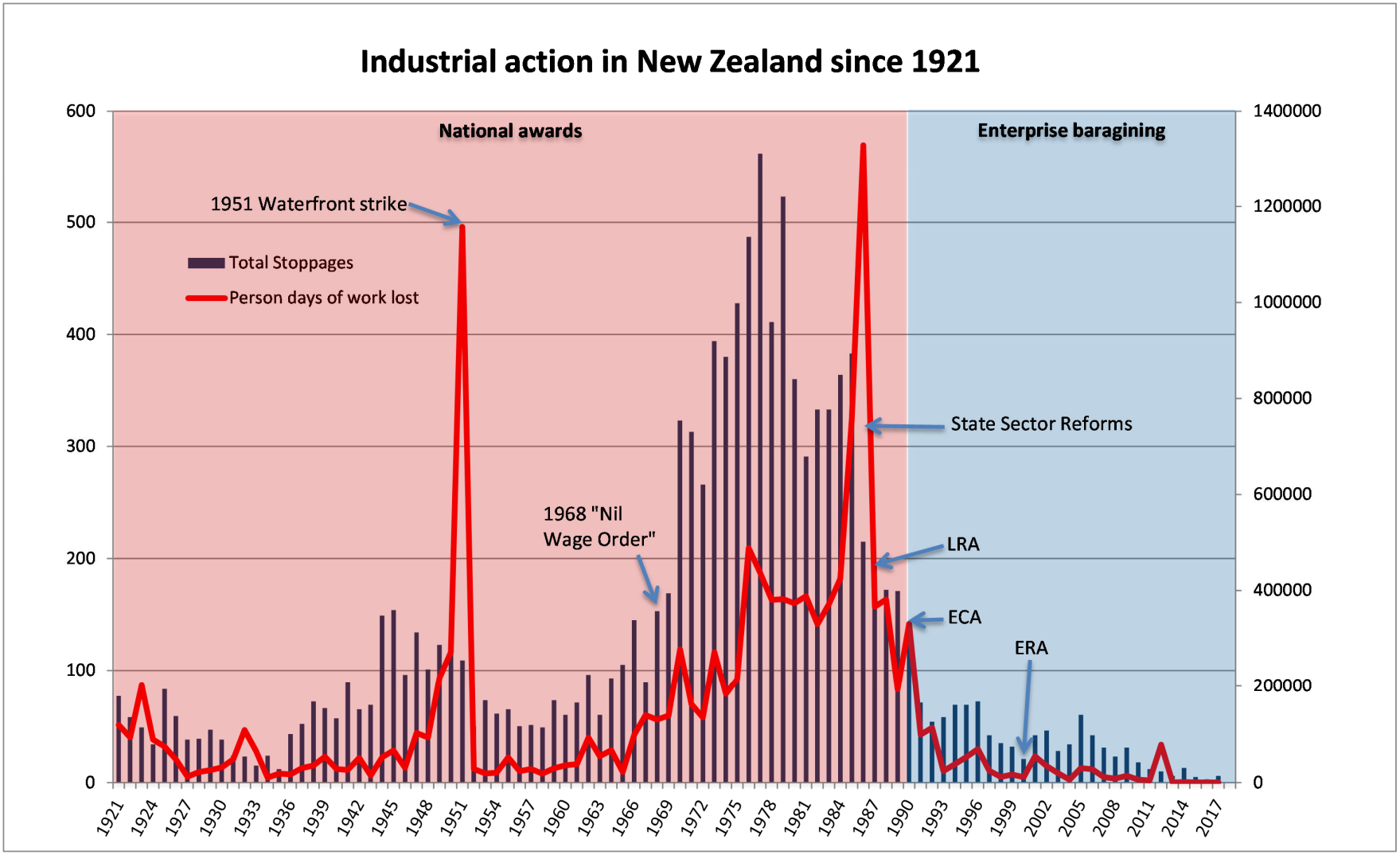
Appendix 1

What will FPAs do?



Fair Pay Agreements will permit second tier bargaining, just as occurred in the 1970's and 80's




Industrial action in New Zealand since 1921
National awards
Enterprise baragining
1951 Waterfront strike
Total Stoppages
Person days of work lost
1968 "Nil Wage Order"
State Sector Reforms
LRA
ECA
ERA
600
500
400
300
200
100
0
1400000
1200000
1000000
800000
600000
400000
200000
0
1921
1924
1927
1930
1933
1936
1939
1942
1945
1948
1951
1954
1957
1960
1963
1966
1969
1972
1975
1978
1981
1984
1987
1990
1993
1996
1999
2002
2005
2008
2011
2014
2017

Appendix 2

BusinessNZ comments on the report of the Fair Pay Agreements Working Group

General Comment

1. The Fair Pay Agreements Working Group report contains elements that concern BusinessNZ.

2. This document sets out reasons for these concerns and suggests alternatives to the recommendations that address them.

3. The suggested alternatives are based on a voluntary approach that combines the concept of codes of practice with the ability to agree a MECA.

Concerns

4. By definition a system of collective bargaining that imposes outcomes, whether or not those covered were directly involved in the bargaining, involves compulsion. We believe such an outcome to be inconsistent with the provisions of international law, in particular the Right to Organise and Collective Bargaining Convention 1949 (No 98). The draft Working Group report does not take account of this, despite it being an issue that has been raised at the highest levels of government but not yet resolved.

5. The draft report's analysis supports a view that while sector and industry-based approaches to collective bargaining may assist in reducing inequality they are less effective in terms of economic productivity, growth and prosperity. However, the suggested recommendations appear to push equality over productivity and growth. This seems counterintuitive and is deserving of further explanation.

6. Employers have previously expressed concerns about the similarity of the FPA concept to pre-1991 award systems. It will be important for this perception to be addressed in any system that is promoted for the future. However, the draft report does not identify how the suggested system will avoid the pitfalls of the past, and indeed contains a number of similarities. For instance:

    a. Under the award system, two outcomes were possible; "*industrial agreements*" - national occupational agreements agreed in bargaining and, "*awards*" - the result of a decision of the Arbitration Commission when agreement could not be reached in bargaining. The same model would apply under the proposed system albeit that "Fair Pay Agreements" would be the term applied to both agreements reached in bargaining and arbitrated decisions made by a proposed independent third party.

    b. Under the award system, unions were coordinated by the Federation of Labour and Council of State Unions (later merged into the CTU) while employer associations were coordinated by the NZ Employers Federation (now BusinessNZ). The same basic model will apply under the proposed

system under which it is recommended that the "social partners" (BusinessNZ and the CTU) coordinate bargaining representatives.

c. Under the award system, negotiated settlements and awards were both registered by the independent arbitration body (the Arbitration Commission). The proposed approach is for an independent arbitration body (possibly the Employment Relations Authority) to authenticate both negotiated settlements and decisions made in arbitration.

d. Under the award system, strikes were not permitted in pursuance of a settlement, but were lawful in pursuit of non-award bargaining. The proposed model prohibits strikes for FPAs and actively envisages "above FPA" deals being used to supplement FPAs, for which strike action is possible.

7. These are not exhaustive comparisons but serve to illustrate the striking similarity between the two approaches. Given employers' strong lack of confidence in the systems of the past, it is important that the Working Group's recommendations for the future identify those aspects of its proposals that will mitigate concerns.

An alternative approach

8. With these points in mind, the table below addresses the structures and processes suggested in the draft interim report, with a view to better aligning them with our international obligations and with our aspirations for a high performing economy.

9. Overarching principles of the alternative approach are:

a. Participation is voluntary.
b. FPAs are industry/sector/occupational Codes of Practice that become binding on parties that sign it (e.g., like MECAs).

NB the draft recommendations have been simplified and reordered for ease of presentation.

Phase	Draft FPA Working Group Recommendation	A possible alternative approach
Initiation	**FPA bargaining process initiated *only* by workers** • Workers to nominate the sector or occupation they seek to cover through a FPA. • Proposed boundaries of the sector or occupation may be narrow or broad.	**Workers or employers can initiate.** • Notice of initiation must include the parameters of a proposed FPA, including scope (breadth) and coverage (depth).
	Two grounds for initiation • *Representativeness trigger* – 10% or 1,000 (whichever is lower) of all workers (union and non-union) in the sector or occupation as defined by the workers.	**Two grounds for initiation** • *Representativeness* (based on membership) • *Issues* (verifiable issues with wide employment related connotations) which require

	• *Public interest trigger* – legislatively specified harmful labour market conditions exist in the nominated sector or occupation. • No equivalent employer representation test.	systemic responses wider than single enterprises to rectify, but which do not apply outside of the sector or industry in which the issues occur. • Wider issues should be matters for national legislation
	Independent body to verify trigger conditions met • Public interest trigger - verify the claim that the statutory conditions are evidenced. • Representativeness trigger - where the number of workers requesting the process is lower than 1,000, the body would verify the baseline number of workers in the nominated sector or occupation and confirm the threshold of 10% has been met. • Time limits set to complete the verification process.	• No verification of initiation conditions required as participation is voluntary
Coverage	**Occupation or sector to be covered to be defined by the parties** • Parties to negotiate the boundaries of coverage, within limits set in the legislation. • Workers initiating the bargaining process must propose intended boundaries of the sector or occupation to be covered by the agreement. • Parties also able to define coverage using additional parameters, including providing for variations in terms for geographic regions.	**Occupation or sector to be defined by participating parties**
	FPAs cover all employers and all workers (not just employees) • FPAs to cover all workers and employers in the defined	• FPAs guide those not signatory to it and bind those who are. • Courts can take account of provisions of a relevant FPA in

	sector or occupation, subject to any exemptions. • Coverage to extend to any new employers or workers after the FPA has been signed. • Employers able to apply to the independent body for a declaration of whether their business falls within the coverage and is required to be involved in the FPA process.	cases of disputes involving matters addressed by FPAs in the same way as they take account of codes of practice .
	Limited flexibility for exemptions from FPAs • Possible temporary exemptions for small employers; new entrants to the workforce or those returning after extended period out of the workforce. • Exemptions limited and temporary in nature (up to 12 months), as the more exemptions provided for will increase complexity and uncertainty.	• No exemptions required

Scope	**Minimum content for FPA set in law**
	• Must include:
	  • The objectives of the FPA
	  • Coverage
	  • Wages and how pay increases will be determined
	  • Terms & conditions, including working hours, overtime and/or penal rates, leave, redundancy, and flexible working arrangements
	  • Skills and training
	  • Duration, eg expiry date
		Minimum content set by agreement but within law
		• Can include:
		  • The objectives of the FPA
		  • Coverage
		  • Wages and how pay increases will be determined
		  • Terms & conditions, including working hours, overtime and/or penal rates, leave, redundancy, and flexible working arrangements
		  • Skills and training
		  • Duration, eg expiry date
		  • Governance arrangements to

	• Governance arrangements to manage the operation of the FPA and ongoing dialogue between the signatory parties, for example, if administrative arrangements are needed for exemptions • Other matters, such as other productivity-related enhancements or actions, even if there is no agreement reached on provisions to insert in the FPA. • FPAs may take account of regional differences within industries or occupations. • Duration of agreements to be agreed, but with a maximum of 5 years. • Additional provisions able to be included by negotiation in the FPA, provided they are compliant with minimum employment standards and other law.	manage the operation of the FPA and ongoing dialogue between the signatory parties, • Other matters, such as other productivity-related enhancements or actions, even if there is no reach agreement reached on provisions to insert in the FPA. • May take account of regional differences within industries or occupations. • Duration of agreements to be agreed, but should include requirements for regular review.
	Enterprise level agreements • Enterprise level collective agreements must equal or exceed the terms of the relevant FPA. • Additional provisions not within the scope of the FPA may also be agreed.	**Enterprise level agreements** • Continue under existing rules
Bargaining process rules	**Good faith rules to apply** • Existing bargaining processes as currently defined in the Employment Relations Act (as amended by ERA Bill) apply, including the duty of good faith.	**Good faith rules to apply** (no change) • Existing bargaining processes as currently defined in the Employment Relations Act (as amended by ERA Bill) apply, including the duty of good faith.
	Time limits for negotiation of FPAs • Fixed timelines for FPA initiation and bargaining process, including for independent third party to	**No time limits for negotiation or renewal of FPAs** • Being voluntary FPA's do not expire, but should contain requirements for regular review

	verify whether bargaining may proceed after receiving notification from an initiating party.	
	Notification requirements • Minimum requirements for all affected employers and workers to be notified of FPA initiation, opportunity to be represented, and informed throughout the bargaining progress.	**Notification requirements** • Minimum requirements for all affected employers and workers to be notified of FPA initiation, opportunity to participate and be informed of progress and outcomes.

Bargaining parties	**Parties to nominate a bargaining representative to bargain on their behalf**
	• Parties to be represented by incorporated entities.
	  ○ Workers to be represented by unions.
	  ○ Employers to be represented by employer organisations.
	• Representatives must meet minimum requirements relating to expertise and skills.
	• Employers and workers to elect a lead advocate.
	• Business New Zealand and the New Zealand Council of Trade Unions, to coordinate bargaining representatives.
	• Disagreement about who representative should be to be resolved by mediation with arbitration by independent body if no agreement.
	• If mediation was unsuccessful, parties could then refer to the independent third party to decide who the representative(s) should be.
		Parties to nominate a bargaining representative to bargain on their behalf
		• Parties can elect to participate themselves or nominate a person or organisation to do so.
		• Members of organisations are bound by those organisation's rules in this regard

	Representative bodies must represent non-members in good faith • Non-members of representative bodies to have the right to be represented during the bargaining	**Representatives bargaining for an FPA required represent their interests and those of members in good faith** • Non-members or clients of participating representatives can choose whether or not to follow

	process. • Representative bodies have a duty to represent non-members, to do so in good faith, and to consult those non-members throughout the process.	their lead or be bound by negotiated outcomes.
	Workers allowed to attend paid meetings to elect and instruct their representatives • Workers covered by FPA bargaining able to attend paid meetings to elect their bargaining team and to endorse claims. • Government to determine whether costs met through Government financial support, a levy, or fee.	**Workers in enterprises affected by proposed FPA allowed to attend paid enterprise meetings to elect and instruct their representatives** • Rules as for collective bargaining under the ER Act 2000.
Dispute resolution during bargaining	**No recourse to industrial action during bargaining** • Strikes and lockouts related to FPA bargaining prohibited, ***but not*** strikes about other matters which coincide with FPA bargaining.	**No recourse to industrial action during bargaining for an FPA** • Industrial action permitted under existing rules in Part 8 ER Act 2000.
	Mediation and facilitation should be the starting point for dispute resolution • Mediation and facilitation are the starting point for resolution of FPA bargaining disputes. • One or both parties may refer bargaining to mediation, in relation to one or more provisions of the proposed agreement.	**Mediation should available for dispute resolution** • Mediation available as a non-binding option for resolution of FPA bargaining disputes. • One or both parties may refer bargaining to mediation, in relation to one or more provisions of the proposed agreement.
	Failed mediation to be referred to final offer arbitration	**No recourse to courts if bargaining fails** • Being voluntary, bargaining for FPAs should not be subject to the jurisdiction of the courts.
Conclusion,	**Ratification**	**Ratification**

variation and renewal	• Procedure for ratification to be set in law. • Simple majority of both employers and workers before agreement can be signed • Workers are entitled to paid meetings for the purposes of ratifying the agreement.	• Signing on as a party will constitute ratification. • An employer not to sign unless a majority of employees also agree.
	No ratification required for arbitrated final agreement • Appeals mechanism on the grounds of a breach of process or seeking a declaration as to coverage.	N/A
	Prior to expiry, either party able to initiate a renewal of the agreement, or for variation of some or all terms. • Variation or renewal of the agreement that is agreed between the bargaining parties must meet the same initiation and ratification thresholds.	**Any signatory party to an FPA able to initiate a renewal of the agreement, or for variation of some or all terms.** • Variation or renewal of the agreement that is agreed between the bargaining parties must meet the same initiation and ratification thresholds. • Participants must meet to review FPAs in accordance with any required review provisions.
Enforcement	• Existing collective bargaining dispute resolution and enforcement mechanisms apply to FPA system.	• Labour Inspectorate will have their current jurisdiction and rules extended to apply to signatory parties to FPAs and the enforcement provisions of the Employment Relations Act 200 will apply.