



## BRIEFING

### Supplementary summary of submissions on the Fair Pay Agreements discussion paper – overall merits of the system

<b>Date:</b>	7 February 2020	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2009 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the contents of this briefing.	21 February 2020

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Tracy Mears	Manager, Employment Relations Policy	04 901 8438	9(2)(a)	✓
Xavier Warne	Graduate Policy Advisor, Employment Relations Policy	04 897 6324		

The following departments/agencies have been consulted

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments



## BRIEFING

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### Purpose

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To provide you with a summary of submissions received on the Fair Pay Agreements (FPA) consultation in relation to the merits of the FPA system as a whole, including the problem definition, the hypothesis about a regulatory gap, and the merits of sectoral collective bargaining in the form proposed in the discussion document. Annex One contains a detailed summary of submissions on these topics. In addition, Annex Two provides a summary of alternative proposals provided by submitters.

### Recommended action

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The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that MBIE received submissions on the overall merits of Fair Pay Agreements. *Noted*
- b **Note** that most views on Fair Pay Agreements were polarised between an acceptance and rejection of the intervention logic presented in favour of Fair Pay Agreements, including the problem definition, the regulatory gap, and the suitability of FPAs as an intervention. *Noted*
- c **Note** that, where submitters took a middle ground between those polarised positions, they advocated careful policy design. *Noted*
- d **Note** you have indicated you want to take final proposals for an FPA system to Cabinet in May 2020. *Noted*
- e **Note** submitters' views outlined in this briefing will inform our Regulatory Impact Analysis that will accompany the May 2020 Cabinet paper. *Noted*

Tracy Mears  
**Manager, Employment Relations Policy**  
Labour, Science and Enterprise, MBIE

Hon Iain Lees-Galloway  
**Minister for Workplace Relations and Safety**

7 / 2 / 2020

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## **This briefing summarises submissions concerning the overall merits of the Fair Pay Agreement system itself**

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### **You sought views on the design of a Fair Pay Agreements system in 2019**

1. A consultation on the discussion paper 'Designing a Fair Pay Agreements System' ran between 17 October and 27 November 2019. The discussion paper sought views on 98 specific questions relating to the detailed design of an FPA system. The paper provided an overview of the problem definition and intervention logic of the system, but did not seek submitters' views on these topics.
2. We have also provided you with two summaries that address the specific, discrete topics - initiation, coverage, bargaining, dispute resolution, market impacts, conclusion - raised in the discussion document (briefings 1866 19-20 and 1892 91-20 refer). This briefing will concern submitters' views on the problem definition, intervention logic, and the system as a whole.

### **Many submitters commented on the overall merits (or risks) of an FPA system**

3. There was an evident interest in discussing the overall merits of the FPA system from most submitters. Views came in the form of free-form submissions, alternative submission templates (the E tū forms and NZCTU's Together text submissions), or answers to Question 8 in the discussion document (*What problems do you think an FPA is best suited to address?*).

## **Submitters debated three key arguments made to justify the proposed FPA intervention, with predominantly polarised positions**

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4. Submissions on the merits of the FPA proposals generally involved the affirmation or rebuttal of the following three arguments presented by the Fair Pay Agreements Working Group (FPAWG) report and the FPA discussion document. Those arguments were:
  - The labour market is delivering some problematic outcomes.
  - These problematic outcomes can be attributed to a gap in New Zealand's employment relations and standards (ERES) system.
  - Sectoral collective bargaining - in the form of FPAs - would fill this regulatory gap and therefore improve labour market outcomes.
5. A full summary of submissions based on these three arguments is provided at **Annex One**.

### **Many submitters described problems in the labour market, though the definition and evidence of 'problematic outcomes' were also questioned**

6. Many submitters (particularly individual workers) described how the terms and conditions provided to many workers fail to live up to reasonable standards of fairness. Workers described unsatisfactory wages, irregular or inadequate hours of work, low staffing levels, insufficient training or equipment provision, unsafe workplaces, and difficult relationships with management. More broadly, submitters described how poor working conditions negatively impact productivity, economic growth, and the wellbeing of individuals, families, and society more broadly. The general consensus among these submitters was that these poor outcomes would not exist if workers had adequate bargaining power or regulatory support to leverage fair treatment from their employers.
7. Some submitters (notably the New Zealand Initiative) questioned the intervention logic presented in favour of FPAs. These submitters argued that the FPAWG report and the FPA discussion document rely on spurious or misrepresented data and research to justify the

intervention - particularly the Organisation for Economic Cooperation and Development (OECD)'s findings on the relative merits of different collective bargaining systems along a spectrum of centralisation and coordination. Many employers questioned the characterisation of some outcomes - such as low pay in certain entry-level 'foothold' jobs - as problematic.

### **Submitters debated whether problematic outcomes in the labour market can be linked to a regulatory gap or if existing mechanisms are sufficient**

8. A large number of submitters (predominantly unions, workers and community groups) noted the need for the ERES system to minimise the imbalance of bargaining power between workers and employers. They argued that New Zealand's current enterprise-based collective bargaining mechanisms fail to achieve this. These submitters argued that this problem is particularly acute in sectors where union membership is low, structural inequalities exist based on ethnicity or gender, workers are isolated, jobs are short-term or insecure, or where employers are hostile to unions. A mechanism for setting a level playing field in such cases was described as a gap in the ERES system. There was a particular emphasis on the abolition of awards through the Employment Contracts Act 1991, which some submitters said fostered market-led competition on wages (rather than on the purpose and quality of businesses) and encouraged a commodification of labour at the expense of workers.
9. Many employer-perspective submitters argued that the labour market is performing well by most measures, that the ERES system currently provides sufficient mechanisms to address poor labour market outcomes where they do exist, and that a regulatory gap therefore does not exist. Such submitters frequently emphasised New Zealand's high minimum wage relative to the median wage, (especially the signalled increase to \$20) particularly in comparison to other OECD countries.

### **Submitters were polarised on the potential risks and benefits of FPAs as an intervention (because of or despite aforementioned arguments)**

10. Supporters of the FPA proposals argued that FPAs would set a level playing field that would address income inequality and poverty (and their social externalities). They claimed that sectoral coordination would give workers the bargaining power to address unfair, unsafe, demoralising, and ultimately unproductive wages and working conditions, and in doing so, promote broader productivity and economic growth. Supporters largely endorsed the findings of the FPAWG report, with some greater emphasis placed on potential for FPAs to address health and safety issues and structural inequality based on sex and ethnicity.
11. However, some other submitters (predominantly employers and employer associations) argued that the intervention logic presented by the FPAWG report and FPA discussion document fails to justify FPAs as the most appropriate intervention (for the problems that do exist). They argued FPAs would create a costly and complex system whose negative outcomes would outweigh any potential benefits.
12. Those submitters highlighted a range of risks presented by the FPA proposals, principally:
  - impacts on productivity and international competitiveness
  - the stifling of innovation and flexibility when they are needed more than ever
  - the complexity and cost of the system (for both employers and government)
  - the compromised quality of industrial relations
  - anti-competitive behaviour or unfair terms for small businesses
  - the disemployment effects of higher labour costs

- the inflationary effects of higher labour costs
- the potential inconsistencies with the right to freedom of association (or non-association), and
- the potential inconsistencies with International Labour Organisation protocols.

## Remaining submitters argued for cautious policy design

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13. Foodstuffs NZ noted many of the risks outlined in paragraph 12 but did not consider them to invalidate the entire FPA system. Instead, it advocated for careful policy design choices aimed at mitigating known risks, and a generally cautious approach in the implementation of the system, with narrow application and scope.
14. The NZ Airline Pilots Association endorsed the aims and logic of the FPA proposals, but submitted that *“more planning, consultation and careful drafting need to be put into the FPA proposal before it can effectively achieve its aims.”* Its particular points of concern were the need to resource unions and employer associations, and for greater focus on skills and training.
15. The NZ Security Association was supportive of the aim of FPAs to raise standards (particularly the living wage) and address undercutting (particularly through subcontractors and owner-operators), but was sceptical whether the FPA proposals would achieve this aim. It argued that strong enforcement would be critical but difficult to achieve in practice, and expressed a preference for an industry-union-purchaser agreement.

## Next Steps

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16. You have indicated you want to take final proposals for an FPA system to Cabinet in May 2020. Submitters' views outlined in this briefing will inform our Regulatory Impact Analysis that will accompany that Cabinet paper.
17. We are available to discuss the submissions with you.

## Annexes

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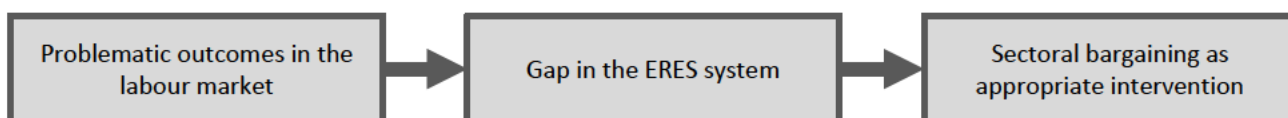
Annex One: Detailed summary of submissions on overall merits of an FPA system

Annex Two: Summary of alternative proposals

## Annex One: Detailed summary of submissions on overall merits of an FPA system

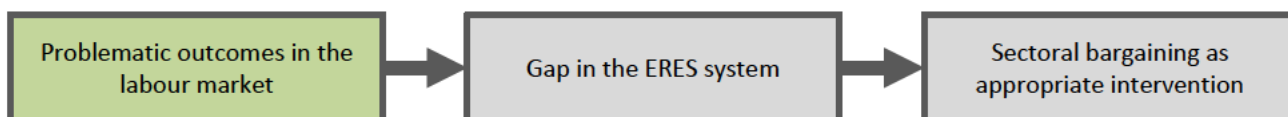
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18. This annex will frame submissions in relation to the line of reasoning used by the FPAWG report and FPA discussion document to justify an FPA system.
19. The FPAWG delivered its report to the Government in December 2018, outlining its recommendations on the justification for, and proposed design of, an FPA system. The report found that there are areas where New Zealand's labour market is underperforming, namely:
  - a persistently sluggish labour productivity growth rate,
  - unequal wage growth across the income distribution, and
  - rising income inequality.
20. The report linked these outcomes to the decline of collective bargaining in New Zealand since the 1990s, particularly at a sectoral level. The report argued that this is most pronounced in sectors where competitive dynamics incentivise employers to compete on labour costs (the 'race to the bottom'). The FPAWG referenced the OECD's finding of favourable labour market outcomes in countries with some sectoral coordination and argued that this level of collective bargaining is a gap in New Zealand's regulatory system.
21. The FPAWG report found that New Zealand could therefore benefit from a system for instituting collective bargaining at a sectoral or occupational level and provided recommendations for how that system could work.
22. This problem definition and justification for introducing FPAs was broadly repeated in the discussion document.
23. The following sections summarise submissions in relation to the three main 'pillars' of the FPAWG problem definition and intervention logic, namely:
  - The labour market is delivering poor outcomes.
  - New Zealand's employment relations and standards (ERES) system has gaps that can be attributed to these poor outcomes.
  - Sectoral collective bargaining - in the form of FPAs - would fill this regulatory gap and therefore improve labour market outcomes.
24. The rest of this annex is divided into six sections outlining the arguments presented by submitters in defence or in opposition to these three 'pillars'. Sections will be marked by the following diagram, with boxes shaded green or red to indicate support or criticism of the argument respectively.



25. Submitters who supported each argument (or some variant of it) will be referred to in each section as 'supporters', and those who disagreed will be referred to as 'critics'. Not all submitters who argued for or against one argument necessarily argued that same way for the others.

## A significant proportion of submitters argued that the labour market is generating poor outcomes for workers, communities and the wider economy



26. We received 388 submissions from workers who used E tū's form to describe the kinds of problems that they think an FPA could address. There were many submissions from the NZCTU's target sectors: cleaning (108), security (46) and supermarkets (21), as well as aviation (108), logistics (26) and care/support workers (20). An additional 150 free-text submissions were provided through the NZCTU's Together platform, although these submitters did not generally provide their occupation or sector. Furthermore, we engaged with workers through workshops in Whangarei, Auckland, Tauranga, Palmerston North, Wellington and Christchurch. Some of these workshops included presentations about the working lives of individual workers in the cleaning, security and supermarket sectors.
27. Through these submissions and workshops, workers generally described FPAs as a way to rebalance the power relationship between workers and employers, introduce industry standards that ameliorate poor working conditions and provide fair remuneration for the work done in specific occupations and sectors.

### Central issues for workers and pro-FPA organisations was the inadequacy of pay; to meet living costs, to correspond to perceived work value, or to match workers performing similar work in the same industry

28. Individual worker submissions and workshop participants almost universally described FPAs as a means to deal with inadequate pay in their jobs or sectors. The inadequacy of pay was typically framed in terms of:
- the cost of living,
  - the undercompensated value of work (in terms of skill, responsibility, conditions, qualifications), and
  - the unequal remuneration of workers performing the same work in the same firm or across the sector.
29. This first conception of underpayment was frequently stated in term of the cost of living or the living wage. For example, one employee stated:

*"I am 53 years old and have worked my whole life. But I have never been able to earn enough for my family of four. Fuel prices are always rising, making the cost of everything higher. We could hardly ever have KFC because there are bills to pay - doctors, school, and clothing - and the price for everything keeps moving up."*

Accordingly, there was a common argument for FPAs to be used as a vehicle for achieving the living wage.

30. The NZ Security Association was the single employer perspective submitter that supported FPAs being used to set wages at the living wage. The inadequacy of pay to meet living costs was also addressed by E tū, which stated:

*"The minimum legislated requirements are an insufficient safety net for workers in [cleaning and security] and many other industries resulting in the persistence of in-work poverty in Aotearoa... It is not uncommon for workers in [cleaning and security] to have 2 or 3 employers, working 50+ hours a week just so they can have a roof over their head, food on their tables, and the ability to pay their bills each week."*

31. Community Action Nelson focused on housing costs as being particularly troublesome for low-paid workers. The New Zealand Initiative acknowledged this problem but not the link to labour market policy, stating that:

*“It is true that low income households in New Zealand have been severely affected by rising housing costs... However, there is no evidence suggesting New Zealand’s poverty statistics stem from problems with the operation of New Zealand’s labour market.”*

32. Wages failing to reflect the skills, responsibilities, conditions or qualifications involved in a job was a common problem for employee submitters. One security guard described his inability to move beyond the minimum wage, despite progressing through level 2 and 3 qualifications (and working towards 4 and 5). The morale effects of pay failing to reflect perceived value was a strong theme expressed by workers in workshops and submissions. For example, one security guard stated:

*“We get abused every day, for what? Minimum wage. No one appreciates what we do”.*

33. Undercompensated experience or pay stagnation with job tenure was a particular concern, exemplified by one worker who stated:

*“I have been a Retail Assistant... for nearly 3 years. I started on the minimum wage even though I have over 20 years’ experience in hospitality selling wine. My wage is now \$17.75 per hour.”*

34. Several organisations echoed workers’ concerns about pay needing to reflect the productivity or value of labour (NZCTU, Motor Trade Association, NZ Air Line Pilots Association, NZ Education Institute). The NZCTU described the problem as the *“transfer of tens of billions of dollars of productivity gains away from working people to corporate interests.”* The Aotearoa Legal Workers Union (ALWU) provided the specific example of junior solicitors, who have as many as six years of training and can be charged out to clients at hundreds of dollars per hour as graduate solicitors, despite (according to an ALWU survey) commonly working for less than the minimum wage (per hour worked).

35. Workers (particularly in the aviation industry) shared concerns about the difficulty of achieving industry standards or pay parity for the same work in the same industry. For example, one worker stated:

*“We have individuals doing the exact same job as crew, being paid differently NOT as recognition of their experience, but simply the contract they are on. Crew work alongside each other, where one individual will get HALF the allowances the other crew got, while that same person who got more allowances also gets overtime rates while the other doesn’t.”*

These concerns were shared by FIRST Union and the NZ Security Association. This issue was not limited to workers earning less than their perceived peers, but also workers with decent conditions wanting their peers to be treated similarly. For example, one cleaner stated: *“I have an excellent job and they pay me well. I would like others to be paid fairly.”*

Submitters expressed concern with the necessity of working long hours and/or multiple jobs to make ends meet on low wages or insecure hours

36. Many workers described working long hours to make ends meet on low wages. There was a common reference to insecure or inadequate hours being provided by employers, often requiring workers to hold multiple jobs or rely on savings or other earners in the household. For example, a care worker stated;

*“Over a period of time [the company] have constantly restructured schedules for permanent staff and constantly reduced hours and staff have had huge reductions of income.”*



37. The need to work long hours or hold multiple jobs to survive on low pay was highlighted as being particularly problematic for youth (StandUp), women (CEVEP), migrant (CEVEP), Māori (CEVEP), and Pasifika (CEVEP) workers. Both the NZCTU Rūnanga and Komiti Pasefika highlighted the particularly damaging effects this can have on family and whanau. NZCTU StandUp stressed how these sorts of working conditions can negatively affect the ability for students to balance work and studies.

Many submitters drew attention to the inadequate investment of resources into staffing levels and working conditions, resulting in health and safety risks

38. A common complaint from workers was chronic understaffing and reduced or inconsistent hours of work leading to higher expectations on the productivity of remaining staff in a shorter time period. A cleaner stated:
- "I have a very wide area to cover and I am supposed to do this in the 8 hours I'm allocated which really needs at least 10 hours to get through all I have to do, so the quality of work goes down and health and safety [risk] rises."*
39. Workers also mentioned insufficient training or inadequate equipment or facilities to perform their jobs safely, effectively, or comfortably. The security sector was a common example, such as one security guard who explained to us in a workshop the insufficiency of equipment, managerial support, and training to deal with the drug dealers, gang members, violence, fires, and stabbings that they have encountered on the job. Highlighting similar problems, a supermarket worker and logistics worker stated in their submissions, respectively:
- "When I first started I had no training and had to work a department on my own, which was extremely stressful... Health and safety practices are learned along the way, not before starting the job"*
- "I work in what amounts to be a big shed. There are no apparent items of insulation, thus the building is very hot in summer and very cold in winter. As a result sickness in the work is common so there is sometimes not enough staff to do the work."*
40. During consultation, health and safety at work emerged as a topic of greater importance for inclusion in FPAs than was reflected in either the FPAWG report or the discussion document. There was a common call among workers for the industry-standard provision of protective equipment, uniforms, safe working environments, and adequate training for the job. The NZCTU Rūnanga highlighted the overrepresentation of Māori workers in health and safety incidents, particularly in forestry and stevedoring.
41. This concern extended to the health and safety of both workers and the public. For example, a supermarket worker at the Palmerston North workshop noted the lack of training at their workplace for using a meat slicer (risk to the worker) and correctly storing cooked chicken (risk to the public).

Workers noted that poor management relationships and workplace culture can perpetuate issues

42. Workers described the culture of fear and poor relationships between workers/unions and employers that pervades some workplaces, and the feelings of isolation, helplessness and resentment felt by many workers as a result of these conditions. This can exacerbate existing imbalances of bargaining power. For example, one bus worker stated:
- "I am working at a workplace that does not allow unions. If you join up all of a sudden your work hours shrink... But no one complains because most of the workers are in their 60s or over and they think 'well where else will I get another job at my age?'"*
43. A contractor shared this concern with workplace culture, explaining how a previous client, despite outward appearances, produced "a culture of fear and willingness to exploit that is going without any opportunity for recourse for many, many workers."

Employees, unions and health providers linked poor working conditions to damaging effects on the health and safety of workers

44. Workers linked poor working conditions to increased levels of stress, fatigue and injury at the workplace, leading to reduced quality of service/product, increased sickness and absenteeism, and reduced motivation to work hard or remain in the job.
45. The link between working conditions and health was drawn emphatically by the Auckland Regional Health Service, which stated:

*“The nature of the work can adversely affect health: through adverse physical conditions of work; adverse psychosocial conditions at work; poor pay and insufficient hours; temporary or insecure roles, and the risk of redundancy or job loss. Moreover, low income affects health through material, psychological, and behavioural means, which in turn contributes to unhealthy strategies of coping with stress. Various adverse working conditions influence the ability of workers to maintain health. These include chemical and physical hazards, long hours, insufficient hours, shift work, poor pay, insecure work, job satisfaction, lack of autonomy, and work-related stress, anxiety and depression.”*

Many organisations described social inequalities in labour market outcomes

46. Some organisations proposed using FPAs as a means to rectify structural inequalities based on sex and ethnicity. Whilst the FPAWG report acknowledged the overrepresentation of women, Māori, and Pasifika in jobs earning less than \$20 per hour, it did not propose any design features aimed at making FPAs a tool for directly addressing social inequality based on sex and ethnicity.
47. The NZCTU Rūnanga described the issues Māori face in the labour market, explaining that Māori are overrepresented in jobs where liveable pay rates, job security, health and safety, and upskilling are lacking. This is to a large extent the result of the types of industries and occupations Māori enter (not necessarily by choice, but also by necessity, particularly in rural areas), but even within these industries, NZCTU Rūnanga contended that Māori are suffering more than non-Māori in the same industry/occupation. It emphasised the need to acknowledge the historical and persistent prejudice across the labour market which works against Māori and asserted that this racism is institutionalised.
48. The NZCTU Women’s Council described problems faced by women in the labour market which could be addressed by FPAs, including the inability to access flexible working hours or paid parental leave, inappropriate staffing levels in occupations where isolated women are more vulnerable (eg. security), and access to toilets and toilet stops (eg in the transport sector). More broadly, it highlighted that FPAs could address poor working conditions in female dominated sectors (like retail).
49. The NZCTU Komiti Pasefika noted the disproportionate number of Pacific peoples in sectors with poor outcomes. It highlighted the added strain faced by Pacific workers in low-pay occupations who typically work to support not just their immediate families, but also community groups, their church, and communities or family in the Pacific Islands.

Submitters described poor working conditions and disparities across the labour markets as broadly harmful to families, communities, particular sectors, and the wider economy

50. Beyond disparities of ethnicity and sex, the NZCTU defined the need for FPAs in terms of general *“social and economic woes such as inequality, undermining of social mobility, the holding back of progress in living standards, and political instability.”*
51. Individual employee submitters explained how poor pay and working conditions affect the ability for sectors to attract and retain workers, impede economic growth, and burden society and the government with negative externalities (poor health, welfare etc.).

52. The link between poor working conditions, high turnover, and low productivity was summarised by one employee submitter, who stated:

*“Because the majority of jobs that are available to school leavers or people with little work experience tend to be low paid and unsatisfying, there is little incentive to remain in jobs and gain experience in an industry... [FPAs could] encourage people to stay in an industry and may help the industry to become more productive.”*

53. The PSA Local Government Sector Committee pointed to the local bus transport sector to illustrate this point, explaining that the race to the bottom on wages and working conditions means that the sector *“has struggled to get and maintain sufficient drivers, resulting in major disruption to the public in lack of service and/or disrupted services.”*

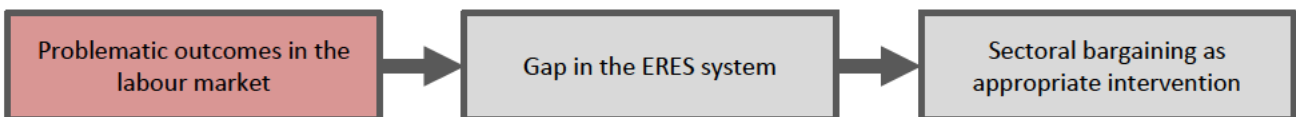
54. Some workers commented on the harmful effects that low pay and poor working conditions can have on the economy. A hospitality worker stated:

*“I cannot afford to not work and have settled for low paid service industry work by constraining my budget. I am often under-utilised in this work... I am the reason the economy isn't growing... because I have very limited discretionary spending power!”*

55. Similarly, some workers noted the social and government costs involved in dealing with the effects of low pay and poor working conditions. One employee submitter stated:

*“We need to remember that without fair pay the people who subsist on that low income do not thrive or live in a reasonably good condition. Healthcare (think rotten teeth), education (think about unaffordable up skilling) and the vicious cycle all of this creates to the deficit of our economy and also the people.”*

**Some critics argued that trends identified as problematic by supporters of FPAs are not supported by data, linked to labour market policy, or truly problematic**



*Many employer and employer representative submitters disagreed with the FPAWG or discussion document's characterisation of problematic outcomes in the labour market*

56. Disagreement with some or all of the problem definition presented in the discussion document and FPAWG report was expressed by BusinessNZ, the Employers and Manufacturers Association (EMA), Tourism Industry Aotearoa, Federated Farmers, AWF Madison, Port of Tauranga Ltd, the Road Transport Forum NZ, the NZ Private Hospitals Association, the Early Childhood Council, Red Stag Timber Ltd, and Green Cross Health.
57. The New Zealand Initiative argued that *“the economic concerns identified in both the Discussion Paper and the FPAWG Report are either false or are not problems that a system of Fair Pay Agreements (FPAs) can solve.”* As with the FPAWG, its points largely concerned the supposed effects of the Employment Contracts Act 1991 (ECA). It argued that:
- Market income inequality has fallen since the ECA was passed.
  - Average hourly wages have increased in all income deciles since the ECA was passed.
  - The OECD has singled out New Zealand as an example of wages tracking productivity growth reasonably well.
  - There is no evidence of a race to the bottom in any industry.
  - The causes of poverty lie more clearly in housing policy, not the labour market.

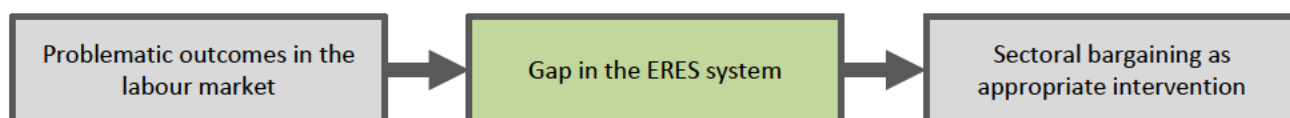
- New Zealand's productivity problem predates the passing of the ECA.
58. Many employers and employer representatives argued that the problematic outcomes listed in the discussion document or FPAWG report do not apply to their sectors, due to:
- current or incoming single- or multi-employer collective agreements in the sector, indicating well-functioning industrial relations mechanisms (Road Transport Forum NZ, NZ Private Hospitals Association, Meat Industry Association, the Warehouse Group)
  - evidence or assertions of wage growth or relatively high, stable industry pay rates in the sector (Retail NZ, Horticulture NZ, NZ Kiwifruit Growers, Freightways, NZ Winegrowers, Early Childhood Council)
  - an existing pay equity settlement in the sector (NZ Aged Care Association)
  - voluntary initiatives to improve working conditions in the sector (Tourism Industry Aotearoa), or
  - a tight market for labour in the sector, increasing the bargaining power of workers to negotiate favourable terms and conditions of employment (Brook Serene, NZ Winegrowers, Tourism Industry Aotearoa, Early Childhood Council).

Some employers argued for the necessity of 'first rung' employment in the labour market

59. Briscoe Group, the Meat Industry Association and Foodstuffs NZ argued that the focus on low wage and low skill sectors ignores the role that they can play in the labour market. Foodstuffs NZ explained:

*"Some sectors require lower levels of skill relative to others and wage rates may simply reflect this fact. The availability of lower skilled jobs provides work opportunities for those new to the workforce, school and university students wanting temporary part-time work to support their study, people returning to the workforce after a period of absence, and those with more limited skill and/or capacity... which has many positive social and economic benefits."*

**Submitters argued that there is a gap in the ERES system that can be linked to aforementioned problematic outcomes**



Supporters of FPAs described the insufficiency of the ERES system to fulfil its objectives

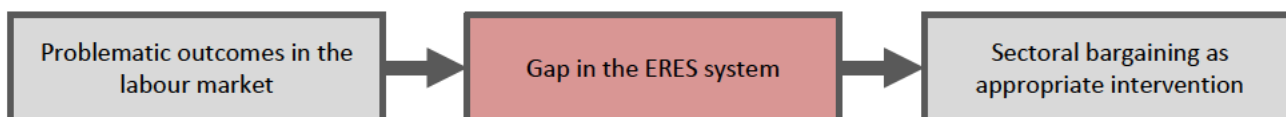
60. The ERES system aims to address the imbalance of bargaining power between employers and workers and is currently characterised by a floor of minimum standards that ensure all employers have certain entitlements, with an individual and firm-level collective bargaining system to set terms and conditions above these minima. Many submitters described cases where workers have limited ability or incentive to negotiate better terms and conditions (which we have characterised as exercising bargaining power), such as:
- Sectors where employers can easily shift production within New Zealand or overseas (NZCTU Rūnanga). The NZCTU Rūnanga explained how the leverage of employers to shift production cannot be matched by workers, who cannot so easily shift to find new work (especially when community attachments are strong).
  - Small workplaces (Centre for Labour Employment and Work, NZ Meat Workers and Related Trades Union, Hutt Union and Community Health Service).
  - Isolated or fragmented sectors (Coalition for Equal Value Equal Pay (CEVEP), Māori Point Wines).

- Workplaces with anti-union cultures (NZ Meat Workers and Related Trades Union, JEM Contracting Ltd, NZCTU StandUp) or incompetent management. JEM Contracting Ltd explained: *“I believe the current culture within many workplaces in New Zealand has fundamental issues, in that people are often afraid to speak.”*
  - Sub-contracting or labour hire arrangements (NZCTU StandUp). NZCTU StandUp explained that there is no incentive for agency workers to assert their rights because they are usually desperate for a permanent position with the engaging employer.
  - Workforces with high turnover, particularly for casual or seasonal work (NZCTU StandUp, Centre for Labour, Employment and Work). The Centre for Labour, Employment and Work explained: *“Some workers... are difficult to organise because they do not develop an attachment to the employer or, for that matter, the occupation or sector.”*
  - Sectors with under resourced unions (CTU Women’s Council) or low union density (Centre for Labour Employment and Work, New Zealand Education Institute). The CTU Women’s Council argued that unions do not, and cannot be expected to have all the resources for bargaining and negotiations on a site-by-site basis.
61. ER Resolutions, which opposed the proposals, nonetheless characterised the current ERES system as largely dictated by relative bargaining power, stating:
- “The outcomes of bargaining are therefore driven predominantly by the balance of bargaining power and the extent to which each party is prepared to fight for their claims rather than by any kind of standards of fairness, objectivity, sustainability or productivity/performance.”*
62. Patoa Farms Ltd, which also did not support the FPA system overall, stated that FPAs could help in *“situations in which workers are experiencing undue hardship with no effective way of dealing with it.”*

Submitters who argued for the existence of an imbalance of bargaining power described how the current ERES system incentivises a ‘race to the bottom’ on wages and working conditions

63. Submitters frequently mentioned the ‘race to the bottom’ as a consequence of insufficient collective bargaining (and insufficient government policy to bolster it), particularly in certain sectors: including labour hire (Hutt Union and Community Health) and the transport (JEM Contracting), dairy (NZ Dairy Workers Union, NZCTU Rūnanga), and kiwifruit (NZCTU Rūnanga) sectors. One employee provided an example of the phenomenon, describing:
- “one of the most trusted and respected employers in NZ (with very high [union] density membership and partnership engagement with unions) is driven to lowering employment standards and conditions for workers... because of competition from two other employers who provide very low pay and conditions to workers in order to compete with the reputable employer for clients.”*
64. Many submitters linked the race to the bottom to the ECA. CEVEP claimed *“the market-led policy approaches of recent decades have led employers to compete on wages costs, rather than on the purpose and quality of their business.”* The Justice and Peace Commission of the Catholic Diocese of Auckland mirrored this notion, quoting its public statement made in 1991 that the ECA *“reduces human labour to the position of a commodity and makes the New Zealand worker accept the fluctuating price in a labour market irrespective of the needs of themselves and family.”*
65. The usefulness of standards for pay and conditions to address inconsistency across sectors was admitted by ER Resolutions, which was otherwise against the proposals. The Motor Trade Association, which did not support introducing an FPA system, acknowledged that a *“‘race to the bottom’ on wages is bad for both employers who are paying fairly and employees and may be helped by an FPA.”*

## Some submitters did not agree that the gap in the ERES system proposed by the FPAWG exists



### Some employers denied that bargaining power is as imbalanced as often claimed

66. Some employers (Brook Serene, Road Transport Forum NZ, Tourism Industry Aotearoa) mentioned how the current low unemployment rate and skills shortages work in favour of employee bargaining power as employers need to compete to win talent when filling vacancies or renegotiating terms of employment. Brook Serene explained:

*“The last time employers like us were in a position to really dictate the terms and conditions of employment... was in the immediate aftermath of the Christchurch earthquake, when so many hotels had been closed and there was a glut of workers looking for work at the remaining businesses. Any other time it’s more the case that an employer puts out a job listing and once the inadequately experienced/trained or non-visa-holding applicants are filtered out, few applicants remain, and they usually get the conditions they are asking for.”*

### Many employers and employer representatives argued that the existing ERES system, particularly with recent and incoming reforms, is sufficient for current needs

67. The New Zealand Initiative summarised a common objection to FPAs in stating “*There is simply no need for FPAs. FPAs are a ‘solution’ looking for a ‘problem’.*” This sentiment was shared by 24 submitters in total, who considered New Zealand’s existing ERES mechanisms to be generally sufficient for current needs. Mechanisms mentioned were:

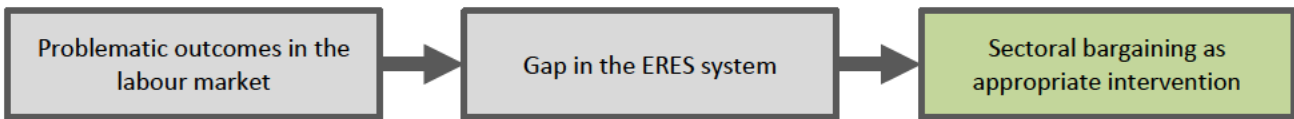
- guaranteeing employment standards (Citycare, Restaurant Association NZ, Print NZ, Red Stag Timber Ltd),
- addressing exploitation (Jetconnect Ltd, Horticulture NZ, Patoa Farms Ltd, Road Transport Forum NZ),
- supporting vulnerable workers (New Zealand Initiative),
- increasing remuneration for the low paid (Retail NZ, Patoa Farms Ltd), and
- addressing income inequality (Bus and Coach Association).

Even if these submitters granted the need to address these issues, they disagreed that a new mechanism was required.

68. Submitters highlighted the minimum wage, statutory annual leave, Part 6A provisions, health and safety regulation, MECAs, the dispute resolution system, immigration sector agreements, pay equity bargaining, Kiwisaver, statutory rest and meal breaks, good faith obligations, union membership rights, domestic violence leave, and government funding levers as existing mechanisms for influencing labour market outcomes.
69. BusinessNZ highlighted that “*New Zealand’s ever-increasing minimum wage, and strong underlying minimum employment code, is one of the most generous in the world*”. The Restaurant Association noted that New Zealand’s minimum wage will be one of the highest in the OECD once increases scheduled for 2021 take effect.
70. Some submitters recommended fixing clear deficiencies in existing mechanisms, such as the Holidays Act (Briscoe Group), or improving enforcement of existing standards (BusinessNZ, Employers and Manufacturers Association (EMA), Road Transport Forum NZ, Horticulture NZ, Motor Trade Association, Print NZ, First Security, ER Resolutions, Patoa Farms Ltd).

71. A summary of other alternative policy proposals suggested by submitters is provided in **Annex Two**.

**Supporters of the FPA system argued it is a good solution for addressing the problematic outcomes and regulatory deficiencies described**



Supporters generally referred to the benefits of greater coordination, improved worker bargaining power and fair minimum standards

72. Submitters who supported FPAs generally referred to one (or both) of two pieces of research: the ‘OECD Employment Outlook 2018’ (often via the FPAWG report) or BERL’s ‘Sector Wage Bargaining, A Literature Review’. According to these submitters, these two pieces of research indicate the benefits of sectoral collective bargaining and therefore FPAs.
73. The NZCTU endorsed the findings of the FPAWG, which stated that
- “The OECD recommends countries consider adopting a model with sector level bargaining<sup>1</sup>, combined with the flexibility to undertake firm-level bargaining... this model delivers good employment performance, better productivity outcomes and higher wages for covered workers compared to fully decentralised systems”.*
74. Supporters of FPAs largely argued the same points as the FPAWG in regards to how sectoral collective bargaining would address labour market issues. In the words of the NZCTU:
- “Fair Pay Agreements can be the foundation for a better way of doing business that supports good employers to compete on quality and innovation instead of constantly cutting corners and undercutting wages. FPAs can also be an important sector governance mechanism, helping individual workers and small firms that have limited capacity or capability to support such structures.”*
75. The NZCTU also highlighted the research it commissioned through BERL, an economic research agency. BERL reviewed the literature on sectoral collective bargaining (particularly the OECD, which has reversed its critical position held in the 1990s) and found that sectoral bargaining:
- “can be seen to provide a governance mechanism that effectively regulates the power and competitiveness between workers and employers... [and] provides wider society with merits that individual contract bargaining does not... for example for*
- *national policy objectives (e.g. employment health and safety)*
  - *social pacts such as equal pay for equal work*
  - *inclusiveness objectives [and]*
  - *an appropriate allocation of productivity gains to labour.”*
76. Submitters proposed that the system could address structural inequalities by:

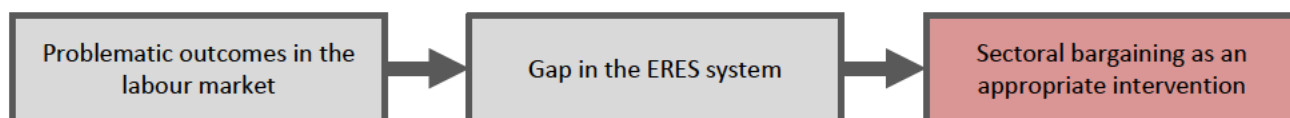
<sup>1</sup> The OECD was referring in this case to countries it considers to have ‘organised decentralised’ systems, such as Austria, Denmark, Germany, the Netherlands, Norway and Sweden. In such countries, sector level agreements play an important role but significant room is left for lower-level agreements to set standards, for example through limited use of extensions, flexibility to define how lower-level agreements can make trade-offs with sectoral standards, or by allowing opt-outs. These systems also generally have strong co-ordination across the industrial relations system.

- formalising engagement with Māori representatives during the development, implementation, monitoring and evaluation of the FPA system, in observance of Te Tiriti o Waitangi (NZCTU Rūnanga, Auckland Regional Public Health Service),
  - collaborating with Pacific peoples during the development, implementation, monitoring and evaluation of the FPA system, with a focus on culturally appropriate and responsive engagement (Auckland Regional Health Public Health Service, NZCTU Komiti Pasefika),
  - including the Gender Pay Principles in the FPA framework (Post Primary Teachers Association, NZCTU Women’s Council),
  - taking into account the social structure of occupations and sectors when assessing the public interest test for initiating an FPA (CEVEP), or
  - making FPAs the legal mechanism for extending pay equity settlements across entire sectors or occupations (CEVEP).
77. Whilst not providing policy suggestions (as above), the NZ Public Service Association (PSA), Tertiary Education Union, and Human Rights Commission endorsed the consideration of equal pay and pay equity within the scope of FPAs.
78. The need for the transparency provided by clear sectoral minima was promoted by one employee submitter, who explained:
- “Where I worked pay was top secret we were not to know what our colleagues were getting paid; it was supposed to stop people being disgruntled if others got more... It was only an excuse to stop people putting pressure on the company to pay fairer wages.”*
79. Supporters of FPAs often described New Zealand’s former award system as a precedent for how FPAs could benefit workers. The NZCTU Rūnanga explained how the end of the award system was particularly harmful for Māori in one sector it chose not to name. It described fairly good terms and conditions in the sector under the award system; including training, hours of work, health and safety, and the length of off-seasons. The sector was a vibrant place to work and the good conditions of work and decent pay flowed through to local communities. It argued that after the ECA was passed, all of this began to be eroded. This took a high toll on Māori and created social upheaval in their communities. Now the sector has low pay, variable start and end times, a poor health and safety record, a reduction in workers’ employment terms, and a long off-season with no income because contracts don’t carry over.

Some submitters referred to pay equity as an example of how regulated sectoral standards can result in good outcomes

80. The PSA highlighted the benefits of mandatory industry-wide terms of employment by reference to the Care and Support Worker (Pay Equity) Settlement Act. It referred to a survey which found significant increases in wages and qualification levels for covered workers since the Act was introduced. CEVEP highlighted that the Employment Relations Act provided no means for applying terms across the sector, meaning that a separate Act was needed. It explained the necessity of terms covering the whole sector, arguing that *“compliance by all residential care employers was needed if Terranova... was not to be undercut on wage costs by other rest home operators.”*

**Critics argued that the benefits of FPAs (if any) would not outweigh the economic and legal risks**





The potential risk to productivity was a central issue for critics of the FPA proposals

81. Many submitters questioned the usefulness of FPAs to improve labour productivity and therefore economic output and wellbeing more generally. Submitters were concerned that the standardised terms of an FPA would delink wages from productivity, be inflexible to competitive domestic and international marketplaces, fail to adapt in a rapidly changing world, and reduce incentives to innovate or work hard. Summarising the importance of productivity, the New Zealand Initiative quoted the economist Paul Krugman, who said:

*“A country’s ability to improve its standard of living over time depends almost entirely on its ability to raise its output per worker.”*

82. Federated Farmers focused on productivity, arguing that FPAs *“can do nothing to address issues such as the small size of our domestic markets or the huge geographic distances from our export market.”*<sup>2</sup>

83. The New Zealand Initiative questioned the use of the OECD Economic Outlook 2018 to justify FPAs, stating:

*“The Discussion Paper omits to cite the 2018 OECD study that cautions that centralised bargaining systems (like FPAs) tend to be associated with lower productivity growth if coverage is high... [An] OECD report relied on by the FPAWG warns: ... delinking of wages from productivity [as a consequence of centralised collective bargaining] could... reduce incentives for employees to work hard, innovate and move to a better-paid job.”*

84. It also referenced OECD’s 2019 Economic Survey of New Zealand, which found:

*“Lower flexibility at firm level, which characterises centralised bargaining systems, may result in lower productivity growth... [and] the [FPA] reform would reduce GDP per capita in the long run, the more so the greater of extension of agreements.”*<sup>3</sup>

85. A key objection to the FPAWG report and FPA discussion document raised by the New Zealand Initiative was the characterisation of the proposed FPA system as ‘organised decentralised’ (using the OECD’s framework). It stated:

*“the system of FPAs proposed by the FPAWG is more akin to a “centralised” system of bargaining... because the proposed framework of terms and conditions to be covered in an FPA is comprehensive, covering all the key terms governing an employment arrangement.”*

86. According to the New Zealand Initiative, if an FPA system would be a ‘centralised’ system, then the OECD’s findings predict that it would be *“associated with lower productivity growth.”*<sup>4</sup> It argued that, even if it were to be ‘organised decentralised’, the OECD’s findings imply no adverse effect on productivity, rather than a positive effect (as claimed by the FPAWG). It quoted Treasury’s advice provided to Cabinet in 2018, which pointed out that MBIE has not presented a *“strong case that industry or occupation-level bargaining would be the most effective policy response... [or] identified an occupation or industry in which the proposed system [of FPAs] would address the highlighted wage and productivity concerns.”*

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<sup>2</sup> It referred to the 2018 Productivity Commission report ‘Can the Kiwi Fly? Achieving Productivity Lift-off in New Zealand’, which explored the factors behind New Zealand’s lagging productivity growth. Suggested policy responses did not include labour market reform (besides improving matching of skills to jobs).

<sup>3</sup> The first claim is based on an OECD study of Portuguese labour market reforms after the 2008 financial crisis, which found *“that putting restraint on the use of administrative extensions of collective agreements during times of crisis may help achieve wage moderation, preserve jobs and restore competitiveness.”* The second claim is based on the OECD’s structural reform simulator.

<sup>4</sup> The 2018 study found that *“centralised bargaining may come at the expense of lower productivity growth, although analysis beyond these empirical explorations is needed to examine the links between bargaining regimes and productivity further.”*

87. Federated Farmers highlighted that the OECD's recommendation for organised decentralised industrial relations systems is broad and as yet untested in the New Zealand context. It recommended a more thorough investigation of the link between productivity and wages in New Zealand. Federated Farmers noted the 2019 OECD Compendium of Productivity Indicators 2019, which explains that returns on labour productivity are not a simple zero-sum game between workers and employers, but can reflect how investment requirements and returns on these investments distribute income between labour and capital.
88. The New Zealand Initiative noted that the 2018 OECD Employment Outlook finding used by the FPAWG to imply that FPAs would raise productivity was that higher wages would force unproductive firms to exit the market. It argued that this would cause job losses and is therefore *"hardly a sensible strategy for labour market reform."*

Critics doubted that FPAs would provide the flexibility needed for innovation in a changing world

89. The New Zealand Initiative presented evidence that *"decentralised wage-setting is associated more with higher productivity than the centralised wage-setting recommended by the FPAWG"*.<sup>5</sup> It explained that under an FPA system:

*"rather than permit individual firms to respond nimbly to the opportunities presented by automation and innovation, firms will be straddled with terms and conditions that are fixed across entire industries or occupations."*

90. The New Zealand Initiative noted the inflexibility of FPAs to match the necessary speed of innovation required to keep up with technological change.<sup>6</sup> This concern with the inflexibility of sectoral collective agreements was shared by Federated Farmers, which stated:

*"the proposals (as a package) will restrict the flexibility of the labour market and by extension restrict the ability of the private sector to adapt to a constantly changing landscape."*

Critics of sectoral collective bargaining drew comparisons with international precedents and New Zealand's former award system

91. The New Zealand Initiative referred to French labour law reforms introduced in 2017, which (amongst other policies) sought to allow firms greater freedom to negotiate at the enterprise (rather than sectoral) level. Similarly, BusinessNZ argued that many European countries have moved or are moving away from extension bargaining, stating that:

*"[France and Belgium] are making strenuous efforts to move away from the [extensions] approach due to its productivity stifling results. Indeed, the EU countries that were forced to introduce the most severe "austerity measures" were mostly those with industrial regimes built on extension bargaining. Italy, Greece and Spain are notable examples."*

92. To illustrate the relationship between decentralised industrial relations systems and increased productivity, Port of Tauranga described how:

*"The [former] industry award delivered low productivity, high and unproductive manning levels, low levels of innovation, high capital requirements and high costs to exporters... Today with the benefit of a completely different labour model... we have been able to grow this business and substantially increase productivity to become the most productive terminal in Australasia. As a result, employment has grown substantially, innovation has been fostered, productivity has increased."*

<sup>5</sup> A 2019 study which found *"a positive linkage between the level of decentralisation at the firm level and value added per employee and firm productivity"* in Sweden; and an OECD study which found that *"firm agreements increase both wage costs and labour productivity (with respect to sector-level agreements)"* in Belgium.

<sup>6</sup> They quote McKinsey's "A Future That Works" report, which stated that the current wave of technological change would occur at *"10 times the pace and 300 times the scale of the industrial revolution"*.

93. Citycare explained the unique (and therefore difficult to standardise across a sector) ways that employers bargain terms and conditions with their employees to find a fair (for employees) and marketable (for employer) outcome:

*“Some organisations pay a higher hourly rate but no overtime. We pay a lower ordinary hourly rate for the bulk of hours (which can be less than some companies) but pay very well for overtime, callouts and weekends... Some of our remuneration rates are made up of 4 components so that we can pay exactly for what we want - skill, productivity, qualification, location if they are a supervisor etc... I don’t know how we could ever get a bunch of employers to agree on these types of things!”*

94. This opposition to a ‘one-size-fits-all’ approach to setting terms and conditions of employment was also shared by BusinessNZ, the EMA, Horticulture NZ, the Meat Industry Association, Federated Farmers, the Restaurant Association NZ, Tourism Industry Aotearoa, the NZ Timber Industry Federation, the Road Transport Forum NZ, Port of Tauranga Ltd, Briscoe Group, WF Madison, Simpson Grierson, Green Cross Health, Red Stag Timber Ltd, and Patoa Farms Ltd.

Submitters were concerned with the complexity and cost of establishing and running an FPA system

95. The New Zealand Initiative looked at the experience of overseas systems with parallels to FPAs and concluded that:

*“complexity will arise from a range of factors, including the need to determine the limits of an “industry” or “occupation” to determine which unions and employers have authority to represent which workers and firms, for consultation between various representative bodies and those they are representing, and so on.”*

96. Port of Tauranga Ltd described the Australian Modern Award system as a “cumbersome, unnecessarily complex and restrictive” precedent for what FPAs could become. The New Zealand Initiative referred to an Australian design firm burdened with several months of legal fees and hearings to contest an AU\$700,000 back pay notice after failing to discern which Modern Award applied to its workers. The Employers and Manufacturers Association also warned of the precedent set by the Australian Modern Award system, stating:

*“demarcation disputes, inter-union disputes over which union has the right to bargain and disputes over defining roles are a consistent feature of the Australian system. For example a decision over a driver delivering on-line ordered groceries to the home went to the federal Court, to decide whether he should be paid as a driver, or a retail shop assistant... The EMA’s equivalent, the Australia Industries group (AiG), retains up to 40 lawyers just to work on these agreements.”*

97. Employers warned of the complexity that FPAs could create in sectors where workplaces contain many different occupational classes (AFFCO), workers in blended roles (Value Timber Supplies Ltd, OCS Ltd, Bus and Coach Association) or varying types of work for similar workers (Jetconnect Ltd). AFFCO warned that, “in being unable to observe each of the applicable FPA’s, a business will not be able to operate to full capacity; or alternatively, its operations will be severely constrained by having to cede its overall efficiency to give effect to each of the workplace FPA’s.” Additionally, OCS Ltd cautioned against broad occupational standards that would cut across significant sectoral differences, such as the public hospital cleaning and private commercial cleaning sectors.

98. BusinessNZ highlighted the insufficient communications infrastructure for effectively running an FPA system, stating:

*“Other than through public media, there are currently no reliable means available for contacting non-members of [unions and industry organisations] and there is no guarantee that they will respond if contacted... these obvious difficulties in*

*communication with affected employers and workers will make it likely that breaches of the good faith obligations of the Employment Relations Act will be unavoidable leading potentially, if not probably, to entirely unnecessary disputes and litigation.”*

99. The cost and complexity of establishing and running in the FPA system was also noted by Green Cross Health.

Some submitters were concerned with the effects of sectoral bargaining on the quality of industrial relations

100. The New Zealand Initiative argued the FPAs would create a “profound” change in the dynamic between workers and employers in regards to problem solving at the workplace. The NZ Timber Industry Federation opposed FPAs on the grounds that a sectoral agreement:

*“creates an unnecessary barrier between individual businesses and their employees and inhibits a direct relationship between the two parties... [and] would introduce irrelevant external impacts to each individual business which... would stand in the way of successful employment relations on sites.”*

101. ER Resolutions were sceptical of the workability of applying FPAs in “sectors that have little or no union representation or experience with managing unions, and at best ‘patchy’ collective industry organisation on the employer/business side.” It stressed that the skill and mandate of the bargaining parties are crucial for successful collective bargaining. More broadly, it was sceptical of sectoral collective bargaining based on experience in multi-versus single-employer collective bargaining. It cautioned that:

*“Often in bargaining for larger MECAs the bargaining agents for both parties... have not worked hard to develop and maintain a constructive day to day relationship and do not have a good working knowledge of the other’s needs and priorities... The evidence of this can be seen in the number of days lost through industrial action in MECA versus SECA negotiations, the high resource cost of these negotiations, the engagement/disengagement of employees in the process and in their view of management of their workplace in general, the operationally challenging terms and conditions that are sometimes arrived at as a ‘compromise’, as well as in litigation.”*

102. Some submitters were critical of the role industrial action would play in the FPA system. Even if industrial action during FPA bargaining is prohibited, the New Zealand Initiative warned that there will still be a risk of industrial action if unions engage in ‘second-tier’ bargaining. BusinessNZ referred to the former award system, in which industrial action was also prohibited, as a precedent, explaining:

*“Under the award system... unions put pressure on individual employers for “above award” settlements... It was this second tier bargaining that gave rise to the phenomenally high level of strikes and lockouts during the 1970s and 80s.”*

103. Conversely, OCS Ltd was concerned with how removing industrial action and introducing mandatory determination would change the incentives of traditional collective bargaining, stating:

*“workers serious about a term or condition can withhold their labour to achieve their goal. Such is a serious decision for members to make... that is not utilised without careful consideration. However, in an environment without this, what possible incentive would workers (organised or not) have to agree anything... They will not be awarded an FPA less than the employers’ best offer, and therefore have the most to gain by never agreeing.”*

Submitters warned that sectoral agreements could have anti-competitive outcomes by setting unrealistic terms for small businesses, who will have less capacity to influence negotiations or manage compliance

104. The Selwyn Foundation argued that, given the limitations of representation in the FPA system, *“certain businesses could find their position under-represented at the bargaining table and could find their continued existence threatened if large-scale pay movements are negotiated which do not take into account their specific context.”* ER Resolutions referred to its experience with MECA bargaining, where

*“the smaller/less important employers have little input into the bargaining which causes them to disengage and just accept whatever outcome is imposed upon them. This leads to challenges around affordability and operational feasibility where terms and conditions are in effect set for them, that don’t work for their operating context. This cycle can become financially and operationally unsustainable for them over time... Many of these businesses can’t afford to provide the same pay and conditions as large employers including corporate and public sector organisations, for workers in the same occupations.”*

105. Building Services Contractors NZ noted that *“failure to have SMEs included in bargaining could result in creating a non-competitive environment.”*
106. Green Cross Health referenced the cost pressures that business have faced in the wake of pay equity, in- and between-travel, and guaranteed hours legislation, even with partial government funding of labour cost increases.
107. The Road Transport Forum NZ and Tourism Industry Aotearoa noted the significant proportion of SMEs in their sectors and therefore the particular risks posed by FPAs given the above risks.

Submitters were concerned with the potential disemployment effects if employers cannot absorb higher labour costs

108. Submitters warned that the increased labour costs associated with FPAs will reduce hiring of young (New Zealand Initiative, BusinessNZ, Restaurant Association, Citycare), inexperienced (AWF Madison, Green Cross Health), un- or low-skilled (New Zealand Initiative, ER Resolutions, EMA), minority (BusinessNZ), low-income (NZ Kiwifruit Growers), or unemployed (Green Cross Health) workers.
109. The New Zealand Initiative explained that:

*“If FPAs are effective in forcing wages above the level that workers’ productivity can justify, firms can be expected to substitute technology for labour or, if otherwise unable to restore competitiveness, cease to operate... Higher wage rates will raise the hurdle for the unemployed to enter the workforce, particularly inexperienced and unskilled workers.”*

110. Job losses were predicted to be particularly acute in sectors where firms face international competition (New Zealand Initiative, EMA). This was reflected in a quote from an electronics manufacturer, provided by BusinessNZ, which stated:

*“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.”*

111. The EMA saw signs of the potential harms of FPAs in the number of people not in employment, education or training rising from 80,000 to 90,000 after April 2019, coinciding with the increase in the minimum wage and the end of 90-day trial periods for larger firms. It stated:

*“employers are telling us they are more likely to take on people with existing skills, rather than take a risk on the unskilled, or those seeking to enter the work place for the first time.”*

112. Some submitters commented that FPAs will incentivise employers to outsource jobs overseas (Green Cross Health, ER Resolutions) or rely on migrant workers (BusinessNZ).
113. Further quotes provided by BusinessNZ indicate that employers would be likely to consider automation if labour costs were to rise. An electronics manufacturer stated:

*“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.”*

Submitters were concerned with the potential inflationary effects of higher labour costs

114. Fourteen submitters (employers, employer representatives and the New Zealand Initiative) noted that employers would likely respond to increased labour costs by raising their prices. AFFCO explained that this risk would be particularly acute in low-margin sectors such as meat processing, where *“there is no guarantee that existing processors can meet any increased costs that would surely result from FPA’s.”*
115. Brook Serene noted that, given the rising minimum wage, further upward wage pressure could be challenging, and would prompt businesses to consider increasing prices where possible or exiting the market. The New Zealand Initiative noted that *“the effect of increased prices will be felt most acutely by the least well-off.”* The Road Transport Forum NZ was explicit in defining this relationship between wages and consumer prices, stating *“the consumer has direct control over wage rates. Until they are willing or able to pay more for freight services, the rates they set will drive road freight transport sector remuneration levels.”* A restaurateur (via the Restaurant Association NZ) explained how businesses could suffer if consumers are unwilling to pay higher prices, stating: *“We just can’t pass increasing wage costs on to consumers.”*
116. In light of this risk, ER Resolutions questioned the net benefit of the system for workers, stating: *“Widespread wage increases will almost certainly increase prices, driving inflation and a higher cost of living, which could offset any benefit of wage increases in real terms.”* BusinessNZ noted the effect of widespread wage claims after the ‘wage freeze’ was lifted in 1983, where *“mortgage interest rates and food prices spiked”*.

Submitters, largely echoing BusinessNZ, raised concerns that the system presents risks to freedom of association (or non-association)

117. The potential for FPAs to violate freedom of association was raised by BusinessNZ, the New Zealand Initiative, Foodstuffs NZ Ltd, Retail NZ, the Motor Trade Association, the NZ Aged Care Association, NZ Kiwifruit Growers, the Bus and Coach Association, Road Transport Forum NZ, AFFCO, Ryman Healthcare, Port of Tauranga Ltd, The Tatua Co-operative Dairy Company Ltd, Patoa Farms Ltd, Green Cross Health, Susan Hornsby-Geluk and one individual submitter.
118. Submitters were concerned that FPAs would remove the right of workers and employers to choose who represents them in negotiations. There was a consistent belief that union and employer association membership levels and collective bargaining coverage rates reflect individual choice (as opposed to structural factors described by supporters of FPAs). Employment lawyer Susan Hornsby-Geluk supported the view that people make a choice to be in a union (or not), and that requiring them to be represented by a union would therefore seem contrary to freedom of association.
119. Ryman Healthcare and the NZ Aged Care Association argued that New Zealand’s current low union density implicitly provides no mandate for the FPA system to be introduced without freedom of association risks. Focusing on NZCTU affiliates (which have advocated for FPAs most strongly), Port of Tauranga Ltd stated that FPAs would allow:

*“a movement representing less than 7% of New Zealand’s workers (not counting the public service) dictating and controlling wages, terms and conditions for over 90% of the workforce. The asymmetry in this proposition is astounding.”*

120. AFFCO argued that the proposed initiation thresholds are problematic in this respect, as *“it is wrong that the wishes of only 10% of the workforce should be able to drag along, and force, the remaining 90% into an FPA process.”*
121. The possibility that workers or employers could be made to pay a bargaining fee or levy to cover the costs of FPA bargaining raised further concern. AFFCO argued that this would *“infringe on a number of international conventions and it would arguably be an unenforceable premium on employment (infringing on s12A of the Wages Protection Act 1983).”*
122. Port of Tauranga Ltd raised an additional concern that unions not affiliated with the NZCTU would be overridden in an FPA system.

*Some submitters considered FPAs to be a violation of International Labour Organisation protocols*

123. BusinessNZ argued that the FPA proposals breach the International Labour Organisation’s (ILO) Right to Organise and Collective Bargaining Convention 1949 (C98), to which New Zealand is bound. This convention requires bargaining systems to be consistent with the principle of free and voluntary negotiation. BusinessNZ argued that the breach would be found in the compulsory arbitration process<sup>7</sup> and the automatic coverage of *“workers and employers who, being remote from the bargaining process, can have no direct influence on its outcomes yet are forced by default into the coverage of an agreement they may not agree with.”*
124. BusinessNZ asserted that *“the introduction of a duty to conclude a collective agreement in the recently passed Employment Relations Amendment Act offends the same international treaty.”*

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<sup>7</sup> It quoted the ILO’s Committee on Freedom of Association: *“Recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is permissible only in the context of essential services in the strict sense of the term.”*

## **Annex Two: Summary of alternative proposals**

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125. Some submitters who questioned the justification for FPAs provided suggestions of other policies that could address the issues raised.

### **Research and further policy design**

- Conduct further policy work to identify potential solutions to labour market problems (Briscoe Group).
- Wait to see the effects of recent policies – Employment Relations Amendment Bill 2018, minimum wage - before introducing more change (Jetconnect).
- Undertake a more thorough investigation of the link between productivity and wages in the New Zealand context (Federated Farmers).

### **The minimum wage**

- Increase the minimum wage in line with the Living Wage (First Security).
- Create new tiers of the minimum wage for semi-skilled (supervisory responsibilities, NZQA qualification, ANZSCO level) or career jobs (aged 21/25 or over and/or in current job for at least 3 or 5 years) (ER Resolutions).

### **Other Employment Relations and Employment Standards mechanisms**

- Introduce a voluntary Fair Pay Agreements system (BusinessNZ: endorsed by Ryman Healthcare, Road Transport Forum NZ, Hospitality NZ, Horticulture NZ, NZ Aged Care Association, New Zealand Kiwifruit Growers, Port of Tauranga Ltd, Tourism Industry Aotearoa, Simpson Grierson, Federated Farmers and DairyNZ). This was the most detailed alternative provided by a submitter (for a full summary see briefing 1866 19-20).
- Improve enforcement of existing employment standards (Motor Trade Association, Patoa Farms Ltd, Print NZ, First Security, BusinessNZ, EMA, Horticulture NZ, Road Transport Forum, ER Resolutions and Federated Farmers).
- Introduce a maximum wage capped to a proportion of the lowest wage earned at a particular company (Gilbert's Fine Food).
- Expand statutory employment standards to cover topics listed in scope for Fair Pay Agreements, notably redundancy (First Security, ER Resolutions).
- Fix currently deficient employment standards, notably the Holidays Act (Briscoe Group).
- Expand the coverage of Part 6A of the Employment Relations Act (New Zealand Initiative).
- Improve helplines and mediation services for employees facing problems at work (individual employee).
- Promote wider use of MECAs (Citycare).
- Publish wage data by occupation/sector to allow employees and employers to transparently discuss industry standard remuneration and conditions of employment (Patoa Farms Ltd).
- Create industry-union purchaser agreements (NZ Security Association).

### **Immigration; health and safety**

- Consider the application of Migrant Exploitation Review proposals to vulnerable domestic workers (ER Resolutions).



- Promote compliance and enforcement in the health and safety and immigration regimes (Restaurant Association, Motor Trade Association).

### **Tax and welfare systems**

- Investigate policies aimed at increasing income security, rather than job security (AWF Madison).
- Reform the welfare system, particularly abatement rates for Working for Families benefits (Patoa Farms Ltd, Ryman Healthcare<sup>8</sup>).
- Increase the tax-free threshold for low-income workers (First Security).

### **Other regulatory systems**

- Address housing affordability (New Zealand Initiative).
- Improve educational outcomes (New Zealand Initiative).
- Fix other aspects of social and regulatory policy, particularly concerning capital investment, localised decision-making, and evaluation of social-policy spending (New Zealand Initiative).

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<sup>8</sup> Ryman Healthcare did not explicitly endorse welfare reform, but noted the risk that any gains from FPAs would be somewhat diminished by reduction in welfare payments to low-paid workers.