



## BRIEFING

### Fair Pay Agreement bargaining support

<b>Date:</b>	27 January 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	Budget - Sensitive	<b>Tracking number:</b>	2021-2007

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Agree</b> to the proposed approach for providing support to peak bodies and FPA bargaining parties.  <b>Agree</b> to extend the same level of support to screen industry bargaining parties.	29 January 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Beth Goodwin	Acting Manager, Employment Relations	04 901 1611		✓
Natalie Nesbitt	Senior Policy Advisor, Employment Relations Policy	04 830 7390		

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 Withdrawn           |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

## Fair Pay Agreement bargaining support

<b>Date:</b>	27 January 2021	<b>Priority:</b>	Medium
<b>Security classification:</b>	Budget - Sensitive	<b>Tracking number:</b>	2021-2007

### Purpose

To seek decisions on the design of the Fair Pay Agreements (FPA) system in relation to bargaining support for peak bodies and bargaining parties.

### Executive summary

The FPA Working Group recommended that bargaining costs should not fall disproportionately on the groups directly involved in bargaining, and concluded the government should consider how these costs should be funded, suggesting government financial support, a levy or bargaining fee.

Following public consultation, the previous Minister asked for advice on a potential capability and bargaining support fund for social partners. We recommended two potential approaches for providing government support:

- A funding contribution of \$50,000 per year to peak bodies (NZ Council of Trade Unions and Business NZ) to help them develop the capability and capability to support the sectors and occupations that initiate an FPA, and/or
- A funding contribution of \$50,000 per bargaining side once an FPA has been initiated.

In November 2020 you met with officials to discuss our advice on bargaining support, among other matters. At that meeting you requested further advice on resourcing peak bodies and support for bargaining parties. In particular you indicated that support should be bolstered and for bargaining parties should be nuanced to reflect that some bargaining parties are experienced and sophisticated whereas others may need a lot of help.

This briefing sets out our further advice on bargaining support. We recommend government financial support for peak bodies should be:

- A set amount for three years. The draft Budget bid includes your preferred figure of \$250,000 per year for each peak body.
- Offered based on a high trust model but with core funding conditions attached, given the crucial role of peak bodies in the performance of the system.
- Provided once the system comes into force.

We recommend that support for bargaining parties should comprise:

- A base level of funding for bargaining parties once an FPA is initiated. The Budget bid seeks base level funding for a contribution of \$50,000 per bargaining side.
- Bargaining training provided by mediators

- Additional bargaining support of up to \$25,000 available to each bargaining side with less than 20% membership to a union or industry group across the FPA coverage group.

The decision to provide financial support for peak bodies and FPA bargaining parties creates an inconsistency with the Screen Industry Workers Bill (SIWB) bargaining system, a similar system where no financial support has been offered. We recommend you extend similar support to parties bargaining for occupational-level collective contracts under SIWB.

Note that the funding allocation proposed in this briefing has been included in the draft Budget bid. Any changes to the funding amounts will need to be incorporated into the Budget bid which is due to the Minister of Finance on 29 January 2021.

## Recommended action

---

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

- a **Note** that the FPA Working Group recommended that bargaining costs should not fall disproportionately on the groups directly involved in bargaining.

*Noted*

- b **Agree** that peak bodies NZCTU and Business NZ should be offered \$250,000 each per year, for three years, once the FPA system comes into force.

*Agree / Disagree*

- c **Agree** that core funding conditions should be attached to the funding provided to peak bodies.

*Agree / Disagree*

- d **Agree** that core funding conditions for peak bodies should be that they:

- Use their networks to raise awareness of the FPA process
- Assist sectors to identify and coordinate bargaining representatives
- Communicate with and offer support to bargaining parties as needed and as is reasonable, and
- Submit to MBIE a short report detailing how the funding contribution was used, at the end of each financial year.

*Agree / Disagree*

- e **Agree** that each bargaining side should be offered a base level contribution of \$50,000, once an FPA has been initiated.

*Agree / Disagree*

- f **Agree** that bargaining training should be offered to bargaining parties, once an FPA has been initiated.

*Agree / Disagree*

- g **Agree** that additional bargaining support of up to \$25,000 should be offered to bargaining sides with less than 20% membership of a union or industry group across the FPA coverage group.

*Agree / Disagree*

- h **Agree** that the same bargaining support funding should be offered to support parties bargaining for occupational-level collective contracts under the Screen Industry Workers Bill as you have agreed for FPA bargaining, that is, a one-off amount of \$50,000 to each bargaining side, on initiation of each instance of bargaining (estimated cost \$800,000 over four years).

*Agree / Disagree*



Beth Goodwin  
**Acting Manager, Employment Relations  
Policy**  
Labour, Science and Enterprise, MBIE

27 / 1 / 2021

Hon Michael Wood  
**Minister for Workplace Relations and  
Safety**

..... / ..... / .....

## Previous consideration

---

### **The FPAWG recommended bargaining costs be shared**

1. The Fair Pay Agreement Working Group (FPAWG) recommended that costs should not fall disproportionately on the groups directly involved in bargaining, and concluded the government should consider how these costs should be funded, suggesting government financial support, a levy or bargaining fee.

### **There was no clear preferred model among submitters**

2. There was no single model of apportioning costs favoured by most submitters. While some supported the simplicity of the status quo (costs lie as they fall), others identified that FPA bargaining is different from collective bargaining, due to the stated 'public interest' purpose of the FPA system, and the wide coverage beyond the boundaries of union and employer organisation membership.
3. Most submitters opposed a levy or bargaining fee alone. Several expressed concern at imposing costs either on small business or on representative bodies if they are required to collect such a levy or fee. Some unions supported a bargaining fee in combination with employers funding remaining bargaining costs.
4. The option which received the most support (albeit almost entirely from employer-perspective submitters) was not specified as an option in the discussion paper: that Government pay for the entire cost of the system, in recognition of the public interest element and of employers lacking choice in whether to participate.
5. Worker-perspective submitters were more likely to suggest Government pay for tangible costs and employers pay the wages of worker representatives.

### **We recommended letting costs lie where they fall**

6. We recommended that bargaining costs should lie as they fall, with parties to agree how the shared costs of bargaining are paid [briefing 2210-1920 refers]. This was MBIE's preferred option as it is simple, certain, consistent with the existing ERES system, and cost efficient: costs are paid by those who incur them, which is an incentive to keep costs low.
7. We acknowledged that there is a public interest objective in creating a system to enable FPA bargaining, but stated that we do not consider the public interest element to warrant the further step of government contribution to each instance of FPA bargaining.
8. We also recommended against using a bargaining fee or levy, and you have agreed to not allow bargaining fees in FPAs [briefing 2021-1914 refers].

### **The Minister requested advice on options for government support**

9. The Minister at the time questioned whether there should be some form of government support provided and requested we provide advice on options for a potential capacity and bargaining support fund for social partners.
10. We recommended two potential approaches for providing government support, namely a funding contribution to:
  - a. Peak bodies (New Zealand Council of Trade Unions [NZCTU] and Business NZ) to help them develop the capability and capacity to support the sectors and occupations that initiate an FPA. We proposed \$50,000 per peak body per year, for three years, or
  - b. Bargaining parties once an FPA has been initiated. The purpose of the funding would be to provide a government contribution to bargaining parties to support them to develop their bargaining capability and capacity and/or their bargaining costs (e.g.

travel, venue hire, and/or communication with affected workers). We proposed \$50,000 per bargaining side, per FPA.

11. As you are aware, the previous Minister decided to pursue both approaches [briefing 2021-0627 refers].

### **You requested further advice on the level of funding, and a nuanced approach**

12. On 17 November 2020 you met with officials to discuss our advice on bargaining support, among other matters. At that meeting you requested further advice on:
  - a. Resourcing peak bodies: your view was that a higher figure more like \$250,000 per peak body per year would better recognise the costs involved, and
  - b. Support for bargaining parties: you indicated that this should also be bolstered and asked us to consider whether a nuanced approach is possible, to reflect that some bargaining parties are experienced, well-resourced and sophisticated whereas others may need a lot of help.

### **Resourcing peak bodies**

---

13. Providing government funding to peak bodies would reflect their special role as social partners in the tripartite context and the role they are expected to play for workers and employers in the FPA system.

### **Amount of funding**

14. Given time constraints and the novelty of the proposed fund we have been unable to find analogous funds or other objective bases for advice on the amount for the fund. Based on the intention for this fund to be a government contribution rather than covering the full cost of a particular activity, you have flexibility in the amount you may wish to offer peak bodies.
15. We note that you have indicated \$250,000 per peak body per year would better recognise the costs involved. We have used this figure in the draft Budget bid. This means that the total funding sought for peak bodies is \$1.5 million over three years.

### **Conditions of funding**

16. Our previous advice was that peak bodies should be able to use the funding in whatever way they consider would support the FPA system. We now consider that given the crucial role of peak bodies in the performance of the system it would be prudent for the government to attach some core conditions to its funding contribution. We recommend a high-trust model where peak bodies receive an annual lump sum funding contribution with the conditions that peak bodies must:
  - a. Use their networks to raise awareness of the FPA process
  - b. Assist sectors to identify and coordinate bargaining representatives
  - c. Communicate with and offer support to bargaining parties as needed and as is reasonable, and
  - d. Submit to MBIE a short report detailing how the funding contribution was used, at the end of each financial year.
17. Beyond meeting these core conditions, peak bodies would be able to use the funding as they see fit, including for developing their own capability, developing systems for raising awareness and communicating with sectors, or passing some of the funding to parties involved in bargaining.

18. The advice in this section is subject to the considerations about SIWB capability support described in paragraphs 42-43 below.

### Timing of the funding

19. We also recommend the funding be:
- a. **Provided once the FPA system comes into force.** This will tie the funding to the legislated FPA system. While this does not allow a lot of lead in time for NZCTU and Business NZ to build capability, the funding would only be intended to provide a contribution to the peak bodies, rather than cover their full costs. Therefore, they could still begin developing capability earlier, with the knowledge that some government support would be provided once the system comes into force.
  - b. **A set amount for a period of three years only.** This would provide certainty in how much funding is forthcoming in the medium term, while allowing officials to evaluate and provide advice on whether any further amount is appropriate on an ongoing basis. The annual reports provided by peak bodies will be useful in informing this advice.

### Capability building through training

---

20. The FPAWG recommended that support to build the capability of the bargaining parties will be needed. It said that capability building will be important to build the skills of those around the negotiating table and maximise the potential for constructive bargaining. It did not provide recommendations on how to build the capability of bargaining parties.
21. We recommend that the most effective way to build capability is through making high-quality bargaining training available to the parties involved in bargaining an FPA. In advice provided in June 2019, we agreed with the FPAWG that providing parties with the tools and capability to better self-resolve and work through early disputes would likely result in better outcomes for the parties and result in less pressure on the later stages of the dispute resolution system [briefing 3693-1819 refers].
22. We consider that MBIE Mediation Services would be best placed to offer training once the bargaining parties have been established. Mediators have undergone bargaining training in preparation for assisting parties bargaining pay equity claims and are rolling out bargaining capability training for the social partners. The work already underway could be leveraged and built upon for developing bargaining training that is targeted at wider interests across an entire occupation or sector. Peak bodies could still develop training in-house for their bargaining parties. We understand that Business NZ already offers this training to its members.
23. The previous Minister agreed that bargaining capability training should be available to bargaining parties after an FPA has been initiated.
24. Confidential advice to Government  
[Redacted text]

### Support for bargaining parties

---

25. Providing funding to bargaining parties once an FPA has been initiated is consistent with the FPAWG's recommendation that costs should not fall disproportionately on the groups directly involved in bargaining. Representatives directly involved in bargaining will be required to represent all employees/employers within coverage, regardless of whether they are paying members of their union or industry group.

## **Base amount of funding for bargaining support**

26. We continue to recommend that bargaining parties receive a base level of bargaining support funding once an FPA is initiated. Bargaining representatives on each side would need to nominate a single entity among them to receive the funding (which could then be shared between representatives as appropriate). The draft Budget bid seeks funding for a contribution of \$50,000 per bargaining side.

## **Additional bargaining support**

27. At your meeting with officials on 17 November 2020 you expressed concern that while some bargaining parties are experienced, well-resourced and sophisticated, other bargaining parties may need extra help. You asked for advice on how to provide further bargaining funding where needed.
28. Bargaining training provided by Mediation Services is likely to go some way towards building the bargaining capability of parties with limited experience and resources. In some cases, however, bargaining parties may need to bring in additional support in the form of lawyers or bargaining specialists to ensure that a fair and reasonable outcome is achievable. Some bargaining parties with limited existing infrastructure may also need to build, or significantly expand, their existing communication channels in order to communicate with all affected workers/employers.

### *Options for further bargaining support*

29. We have identified a range of options for providing further bargaining support for bargaining parties above the proposed set contribution of \$50,000 per bargaining side:
  - Option 1: Status quo/\$50,000 per side – each bargaining side is entitled to \$50,000 as a contribution to the costs of bargaining, and is offered bargaining training by Mediation Services.
  - Option 2: Contestable grant funding – bargaining parties can apply to MBIE for additional funding. MBIE determines whether to provide funding based on a set of criteria. Alternatively applications could be made to the ER Authority.
  - Option 3: Ex-post cost reimbursement – parties can apply to have costs reimbursed. MBIE determines whether to reimburse based on a set of criteria.
  - Option 4: Parties with less than 20% membership to a union or industry body across the FPA coverage group will receive additional funding.
  - Option 5: All bargaining parties receive more funding.
30. We have assessed the identified options against the following considerations:
  - a. Effective in supporting bargaining parties that require extra help
  - b. Administratively efficient and timely.



31. The options and our assessment of each are summarised in the table below.

Option	Effective	Administratively efficient
Option 1 – Status quo /\$50,000 per side	<p>Peak bodies will be required to use some of their annual funding to support bargaining parties as needed.</p> <p>Risk that this approach makes bargaining parties reliant on the resources of peak and representative group bodies, giving these bodies significant power to provide support according to their own priorities.</p>	Easiest to administer.
Option 2 – Contestable fund with criteria	<p>Would be difficult to establish suitable criteria to inform an objective decision on eligibility.</p> <p>A fund application process favours those with the capability to write good funding applications, which may select against those who may be most in need of additional funding.</p>	<p>Administratively inefficient – the costs of administering a fund are likely to be significant and may outweigh the amount of funding granted.</p> <p>Application process from writing an application to outcome could take several weeks to months.</p>
Option 3 – Cost reimbursement	<p>Bargaining sides in need of additional resources are unlikely to have the funding to front the costs. Given the circumstances they may also be unlikely to qualify for a bank loan.</p> <p>As per Option 3, it would be difficult to establish suitable criteria for reimbursement.</p>	Slightly easier to administer than option 2 as the costs are already known.
<b>Option 4 [MBIE preferred]</b> – Bargaining sides with low membership to a union or industry body across the coverage group get additional funding	<p>Effectively targets the bargaining sides that have the least existing infrastructure and less access to support and expertise from representative bodies.</p> <p>Low risk that individual employers/workers will leave their union or industry body in order for it to receive more direct funding. We consider this unlikely.</p>	<p>An objective measure will be easier to administer compared to assessment against a list of criteria.</p> <p>Some work required by the bargaining side to demonstrate the level of representative body membership across the coverage group. Establishing a low threshold for eligibility will make this easier.</p>
Option 5 – All parties get more base bargaining support	This is not nuanced, but ensures that bargaining parties that need extra help will receive it.	<p>Easiest to administer.</p> <p>Increased costs for the system.</p>

*Recommended option for additional bargaining support*

32. To support parties with less access to funds from their representative body or base, we recommend that parties with less than 20% membership to a union or industry group across the FPA's coverage group automatically receive an additional grant upon initiation being verified.
33. Setting a low threshold for representative body membership density, such as 20%, would provide access to the additional support for a larger number of bargaining parties. On the employee side, the average union membership density across all occupations is 19%. At a 20% threshold, about 75% of occupational groups would be eligible for additional support. At

a 15% affiliation threshold level, 63% of occupational groups would be eligible. For your information, Annex 1 sets out union density percentage by occupation.

34. We do not currently have good information to predict the likely eligibility at a 20% threshold on the employer side. Reporting to the OECD notes that the average Business NZ membership, as a proportion of employees in employment, is 83.2% (2019). This figure may not be reliable as it is based on the proportion of employees in employment rather than reflecting all employers. Please indicate if you would like us to work with Business NZ to provide further information on the density of industry group membership on the employer side. In the absence of further information, we suggest using the same percentage figure for both employers and workers.
35. We suggest additional funding of \$25,000 would make a useful contribution to the costs for bargaining sides with less resource and bargaining experience. Confidential advice to  
Government

### **The above decisions create an inconsistency with the SIWB bargaining system**

36. The decision to provide financial support for peak bodies and FPA bargaining parties creates inconsistencies with the SIWB system. The SIWB and FPA systems are similar, as both allow for sector-wide collective bargaining. The message from government to industry in relation to SIWB to date has been that the government does not pay for parties' bargaining costs. For example, in October 2019, the former Minister wrote to the Film Industry Working Group stating, "It is outside current government policy to provide resource support to parties in collective bargaining", citing the risk that it could create an expectation that such support would be available for all parties to collective bargain, regardless of industry. The former Minister noted that taxpayer-funded support came in the form of providing mediation services, pre-bargaining training and forthcoming educational guidance.
37. Government financial support for FPA bargaining will likely be seen as an inconsistent decision with the above message. We expect SIWB stakeholders will perceive this as different treatment without justification, may believe they have been misled, and could publicly express dissatisfaction.
38. In particular, the SIWB system has been designed in the knowledge that Screen Production and Development Association (SPADA) is likely to represent engagers in most instances of screen industry bargaining at the occupation level. SPADA is likely to consider that it is missing out on multiple instances of \$50,000 bargaining support. The same arguments are likely to be made in relation to the FPA peak body contribution.
39. We consider there is a lower risk of dissatisfaction being expressed in relation to other forms of bargaining, such as multi-employer collective bargaining or pay equity bargaining. This is because there is not the same level of similarity as between FPA and SIWB bargaining: both being new interventions where bargained agreements will apply compulsorily to all in an occupation or industry.

#### *There are options to resolve this inconsistency*

40. We suggest the options to address this inconsistency with SIWB are:
  - a. Manage it, through proactive communications which explain the rationale for the different approach to funding bargaining costs for the FPA system.
  - b. Reverse the decision in the FPA system to provide some funding towards peak bodies and bargaining costs for bargaining parties.
  - c. Extend equivalent support under the SIWB.

41. We recommend option c, to extend similar support to screen industry bargaining at the occupation level, for consistency. For complete consistency, we recommend you allocate an equivalent \$50,000 per bargaining side, once occupation-level bargaining is initiated. This is likely to result in costs of \$800,000 over four years for the first round of occupation-level collective bargaining, given SIWB specifies eight occupational groups. We also recommend you extend the proposed FPA entitlement for \$25,000 in additional bargaining support for bargaining sides with low union or industry group membership.
42. Support for SIWB peak bodies is less clear. As SIWB and FPAs will be similar systems, you may wish to extend the application of the proposed \$250,000 per year for NZCTU and Business NZ to be for the purposes of both FPA and SIWB bargaining. This would be appropriate at one level, as NZCTU and Business NZ are New Zealand's social partners in relation to all matters of workplace relations (e.g. as evidenced by their role in relation to International Labour Organisation functions). It would also reduce duplication, as we expect the skills and infrastructure needed for sector-wide bargaining could apply in both systems.
43. Confidential advice to Government  
[Redacted text]

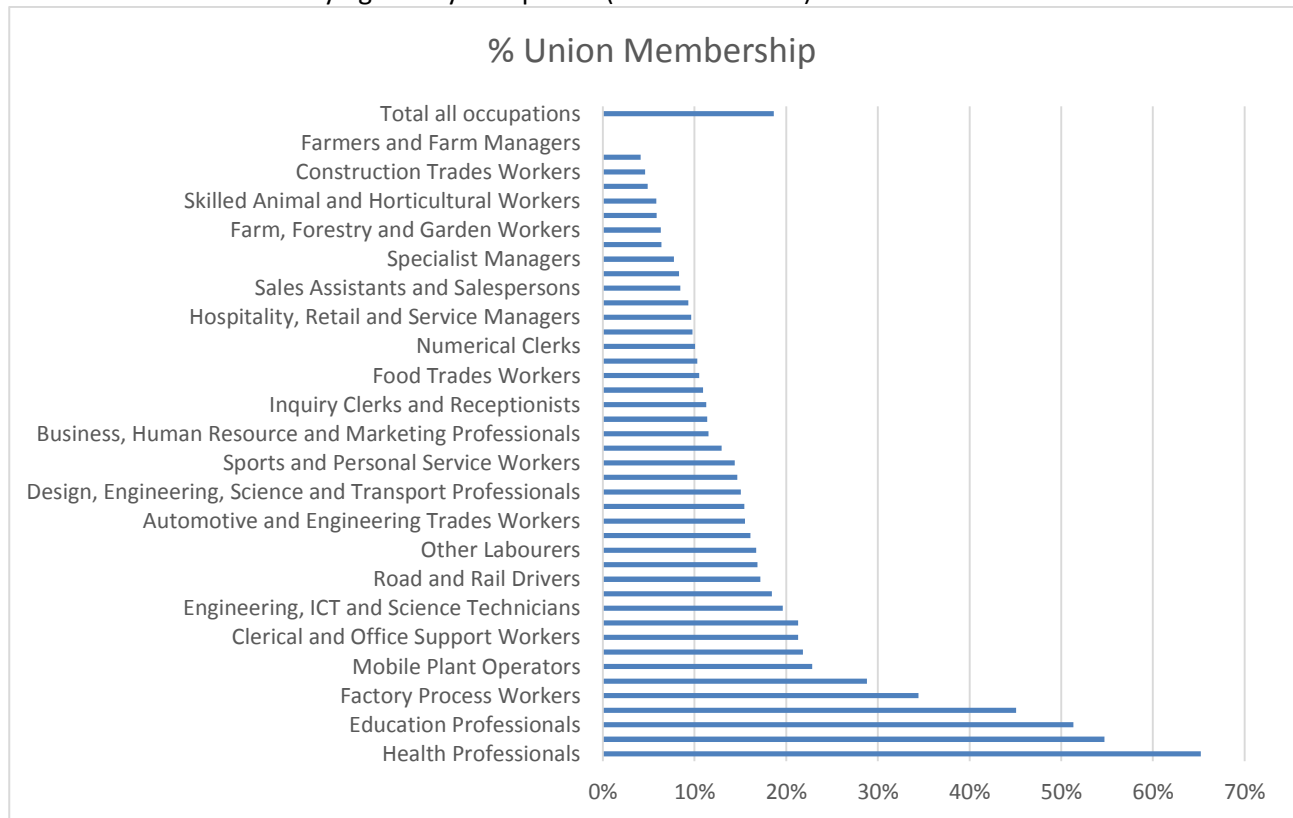
## Annex

---

### Annex One: Union density figures by occupation

## Annex One: Union density figures by occupation

New Zealand Union density figures by occupation (December 2018)<sup>1</sup>



<sup>1</sup> Source: December 2018 quarter *Household Labour Force Survey* (HLFS). Note that as of Sep-20 quarter (latest HLFS data available) union membership is still 19% of total employees.