



BRIEFING

Fair Pay Agreements: objective of the system

Date:	9 February 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-2100

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Approve our proposed objective for the FPA system.	16 February 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Tracy Mears	Manager, Employment Relations Policy	04 901 8438		✓
Natalie Nesbitt	Senior Policy Advisor, Employment Relations Policy	04 830 7390		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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Date:	9 February 2021	Priority:	Medium
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Purpose

To seek your approval of our proposed objective for the Fair Pay Agreements (FPA) system.

Recommended action

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

- a **Note** that we have further developed and refined the FPA system objective, based on key Ministerial decisions on the design of the system.

Noted

- b **Note** the objective will be taken into account in the remainder of our advice and be included in your upcoming Cabinet paper seeking policy decisions, and it may also be drawn upon by Parliamentary Counsel Office in forming the purpose statement for the FPA legislation

Noted

- c **Agree** to the proposed objective:

The objective of the FPA system is to improve labour market outcomes by enabling employers and workers to collectively bargain industry- or occupation-wide minimum employment terms and conditions.

Agree / Disagree

- d **Note** that we developed a provisional set of FPA system outcomes which we included in your Budget 2021 bid, and which will be developed further during 2021.

Noted

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

..... / /

Hon Michael Wood
Minister for Workplace Relations and Safety

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Proposed objective for the FPA system

Cabinet agreed in principle to a high level objective in 2018

1. In May 2018, Cabinet agreed in principle to “introduce a legislative system that *allows employers and workers to create Fair Pay Agreements that set minimum employment terms and conditions across an industry or occupation*” [CAB-18-MIN-0250 refers]. Cabinet’s in-principle agreement was subject to the policy being further considered by Cabinet once the FPA Working Group had reported back on the scope and design of the system.
2. The Working Group did not expand on the objective “to set minimum terms and conditions of employment across industries or occupations”, but noted that FPA bargaining could be most useful in sectors or occupations where particular issues are identified, and also where workers and employers simply identify room for improvement. They did note that FPAs may not be necessary or useful in some sectors or occupations.

Key design decisions have shaped the objective

3. Since 2018, Ministerial decisions on key design elements of the FPA system have served to incrementally develop and refine this high level objective for the system. Key design decisions include:
 - a. Endorsing the FPA Working Group’s recommendation to include either the representation or public interest test (rather than our recommendation to require both tests to be met).
 - b. Your strong preference to encourage and support a bargained outcome and ensure the system does not include ministerial decision-making.
 - c. Including working hours, overtime and penalty rates, in addition to base wage rates, as mandatory to agree terms, and a broad range of topics, such as skills and training, as mandatory to discuss terms.
 - d. Incentivising industry-wide or occupation-wide FPAs, as opposed to many FPAs per industry or per occupation.

It is timely to review and reconfirm an objective for the FPA system

4. We consider it timely to crystallise these refinements and confirm an objective for the FPA system.
5. The objective will be explicitly taken into account in the remainder of our advice and included in your upcoming Cabinet paper seeking policy decisions. It may also be drawn upon by Parliamentary Counsel Office in forming the purpose statement for the FPA legislation.

Proposed objective

6. Based on the key design decisions taken to date, we suggest the FPA system objective be described in the following way.

The objective of the FPA system is to improve labour market outcomes by enabling employers and workers to collectively bargain industry- or occupation-wide minimum employment terms and conditions.

7. The following sections outline our rationale for each part of this suggested objective.

Improve labour market outcomes

8. This wording is intended to highlight that the FPA system has been designed to improve labour market outcomes across industries and occupations throughout New Zealand. The main vehicle in the system for improving labour market outcomes for workers is increased bargaining power. The FPA system includes the following key mechanisms for increasing workers' bargaining power:
 - a. An additional tier for collective bargaining: the FPA system will allow for bargained minimum standards that bind an entire industry or occupation, building on national minimum standards and providing a new floor for enterprise level collective agreements where an FPA has been concluded.
 - b. Initiation is relatively easy and employer representatives must engage: any union can initiate bargaining if they meet one of two initiation triggers. Employer representatives must engage in bargaining once an FPA has been initiated.
 - c. An FPA must be concluded: once an FPA has been initiated it must be concluded, either by majority ratification or, if bargaining parties cannot reach agreement on terms and conditions, by Employment Relations Authority determination.
 - d. Creation of new minimum standards: FPAs must include terms and conditions relating to working hours, overtime and penalty rates. These terms and conditions are not required to be agreed in enterprise level collective agreements and are not covered by existing national minimum standards.
9. As a package, the above mechanisms are expected to support workers to collectively bargain better employment terms and conditions in industries and occupations where an FPA is initiated.
10. Firms are likely to benefit from better sector-wide co-ordination and dialogue, which is expected to reduce transaction costs and allow parties to capitalise on the potential to address industry-or occupation-wide issues and opportunities. The level playing field provided by FPAs will support firms to improve wages and conditions without fear of being undercut on labour costs by competitors, and create incentives to increase profitability or market share through increased investment in training, capital and innovation.
11. The system is expected to have a moderate impact on labour market outcomes in the short term, and a more significant impact in the medium and long term once it is bedded-in and the number of workers covered by FPAs grows. However, the system does not specifically target industries or occupations where there are specific issues such as inappropriate risk transfer to workers or competition based on holding down or reducing terms and conditions offered to employees. This means it is unclear whether or when an impact on labour market outcomes in these industries and occupations might be achieved.
12. Including 'improve labour market outcomes' upfront in the objective also signals that this will be the key area to focus our monitoring and evaluation activities. Our provisional intervention logic map, which sets out the short to medium and long term outcomes for the FPA system, is attached at Annex 1. It will be developed further to include a detailed monitoring and evaluation plan during 2021. Note that an earlier version of this intervention logic map was attached to your Budget 2021 bid.

Enabling employers and workers to collectively bargain

13. This wording is intended to make clear that use of the FPA system is widely available to unions from any sector if an initiation trigger is met. This contrasts to an approach where use

of the system would be prioritised or limited according to the government's objectives or areas of focus.

14. The wording also signals that the intention of the system is that an FPA should ideally be a collectively bargained outcome between workers and employers, rather than a standard determined by the government.
15. We have used the term 'workers' rather than employees to signal your intention to extend the system to cover contractors at a later date.

Industry or occupation-wide

16. This wording signals that the design of the system incentivises industry-wide or occupation-wide FPAs, as opposed to many FPAs per industry or per occupation. This design was preferred to better support sector-wide social dialogue, and to capitalise on the potential to address industry-or occupation-wide issues and opportunities [briefing 2021-1837 refers].

Minimum employment terms and conditions

17. The reference to 'minimum' employment terms and conditions clarifies that FPAs are collective agreements that will bind a whole industry or occupation to a minimum standard.

The proposed objective does not specify which groups of workers will benefit from improved labour market outcomes

18. We did consider whether the objective should signal specific types of workers who may benefit from FPAs, e.g. those facing challenges that would trigger the public interest test. However, the different avenues for initiation mean it is not possible to predict which groups of workers will apply for an FPA.

Annex

Annex One: Provisional FPA intervention logic map

Annex One: Provisional FPA Intervention logic map

