



BRIEFING

Fair Pay Agreements – ratification processes for employers and employees

Date:	26 February 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2021-2182

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	<p>Agree that employer bargaining parties will run employer ratification</p> <p>Decide what the employer and employee ratification processes are</p> <p>Confirm that employers will receive one vote per employee in coverage with a sliding scale of weighted votes for small and medium employers</p>	4 March 2021

Contact for telephone discussion (if required)				
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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 Withdrawn |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 Agreements – ratification processes for employers and employees

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Purpose

To provide advice on the ratification processes for employers and employees in the Fair Pay Agreement (FPA) system, including the role of Government and how employer votes should be counted.

Executive summary

The ratification process in the FPA system is intended to seek approval for the bargained FPA from those within its coverage before it is set in law and binding on those parties. As recommended by the Fair Pay Agreement Working Group (FPAWG), in order for an FPA to be ratified, a simple majority is needed on the employer side and the employee side.

You have decided that unions will run the ratification process on the employee side, and consequently we consider it appropriate that the employer bargaining representatives run the ratification process on the employer side.

We consider that ratification processes in the FPA system will need to be more prescriptive than those for collective bargaining in the *Employment Relations Act 2000* (ER Act). We recommend unions and the employer bargaining representatives should decide their ratification processes, but that their processes must meet a set of legislated minimum requirements. This is a similar approach to the one taken in the *Equal Pay Amendment Act 2020* (Equal Pay Amendment Act).

We think that minimum requirements for FPA ratification should include requirements such as: giving reasonable notice to known affected employers and employees of their entitlement to vote, and providing them with information on how they may vote and by what date. In addition, we think that parties conducting the vote should have record-keeping obligations to ensure legitimacy of the vote and for verification purposes. For example, unions should be required to record an employee's name, job title, outcome of the employee's vote, their employer's name and a way of contacting the employee, but would not be able to use this information except for the purposes of ratification and verification.

After ratifications have been run, we consider it important that a government body verifies the processes run by the union(s) and employer bargaining representatives, and the outcome. This ensures the legitimacy of the ratification before the FPA is set in secondary legislation by the Government.

We have noted that we would provide advice on the proposed weight of an employer's vote in ratification. We discussed 5 options with you that varied from one vote per employee, to one vote per 10 employees, to leaving it to the bargaining parties to decide how the vote is weighted. Our analysis showed that there was no one option that was consistent, workable and simple, and achieved a desirable level of proportionality and transparency. You have since decided that an employer should receive one vote per employee in coverage with a sliding scale of weighted votes for small and medium employers.

Recommended action

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

Ratification process

- a **Note** you have decided that unions will run the employee ratification process Noted
- b **Agree** that employer bargaining representatives run the employer ratification process *Agree / Disagree*
- c **Agree** that bargaining parties will decide their ratification processes, but that the processes must meet legislated minimum requirements *Agree / Disagree*
- d **Agree** to the ratification process minimum requirements for unions that ensures:
- a. each known employee in coverage of the FPA is entitled to vote
 - b. all votes have equal weight
 - c. unions record the employee's name, job title, outcome of the employee's vote, their employer's name and a way of contacting the employee, (but cannot use this information except for the purposes of ratification and verification).
 - d. each known employee in coverage is provided with a copy of the proposed FPA within a reasonable time before voting starts
 - e. each known employee in coverage of the FPA is given reasonable notice in writing (no shorter than at least 10 working days before the ratification is set to take place) –
 - i. that they are entitled to vote
 - ii. of the final date by which their vote must be cast
 - iii. of the method by which votes may be cast, which must include at least one avenue to vote from a distance e.g. online or proxy voting
 - iv. of the consequences of the union finalising the FPA (including that if a simple majority is achieved, the FPA will be verified and put into secondary legislation, or if a simple majority is not achieved it will return to bargaining or determination)*Agree / Disagree*
- e **Agree** to the ratification process minimum requirements for employer bargaining representatives that ensures:
- a. each known employer in coverage of the FPA is entitled to vote
 - b. all votes have equal weight, but the number of votes an employer receives will vary according to the number of employees they have in coverage
 - c. employer bargaining representatives record the employer's name, best estimate of the number of employees the employer has in coverage, number of votes cast, outcome of the employer's vote and a way of contacting the employer;
 - d. each known employer in coverage is provided with a copy of the proposed FPA within a reasonable time before voting starts

- e. Each known employer in coverage of the FPA is given reasonable notice in writing (no shorter than at least 10 working days before the ratification is set to take place) –
 - i. that they are entitled to vote
 - ii. of the final date by which their vote must be cast
 - iii. of the method by which votes may be cast, which must include at least one avenue to vote from a distance e.g. online or proxy voting
 - iv. of the consequences of the employer bargaining representatives finalising the FPA (including that if a simple majority is achieved, the FPA will be verified and put into secondary legislation, or if a simple majority is not achieved it will return to bargaining or determination)

Agree / Disagree

Coverage

- f **Note** that the FPA system permits parties to bargain increases in coverage after ratification fails which means the second ratification would include workers and employers who were not involved in the first ratification.

Noted
- g **Note** that this may increase the risk that the FPA fails ratification, which would then trigger a determination.

Noted
- h **Agree** that where coverage is substantially changed after a failed ratification, that the process only requires two failed ratifications in total before the FPA goes to the Employment Relations Authority for determination.

Agree / Disagree

Employee votes

- i **Agree** that each employee in coverage is entitled to one vote for ratification and each vote has equal weight

Agree / Disagree

Employer votes

- j **Note** that on 10 February 2021 MBIE discussed 5 options with you for how to weight an employer's vote

Noted

- k **Confirm** that you have decided that an employer will receive one vote per employee within coverage of the FPA, with a sliding scale of weighted votes for small and medium employers

Confirm/Discuss

Verification

- l **Agree** to a government body conducting a verification check on the ratification processes and results reported by the bargaining parties

Agree / Disagree

- m **Agree** that the verification body be able to advise bargaining parties if further action is required for a ratification to be approved

Agree/Disagree

n **Note** we have already recommended that the verification body should be able to request further information if required during the verification process (briefing 2021-1989 refers)

Noted

o **Note** that a party will be able to apply for a judicial review of the verifier's decision if an issue with a ratification process or results is discovered after the FPA has been verified.

Noted



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

Hon Michael Wood
Minister for Workplace Relations and Safety

26 / 2 / 2021

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Background

1. A number of policy decisions are still needed on some design features of the proposed FPA system, including some key design features. These decisions are needed so that Cabinet agreement to the FPA system and approval to draft legislation can be sought in April 2021, and PCO can begin drafting a Bill (briefing 2021-0627 refers).
2. On 17 November 2020, you met with officials to discuss the development of the FPA system. At this meeting you decided that employee ratification will be run by unions, and employer's votes would be proportionate to their employees (i.e. employers would get one vote per X number of employees).
3. Since this meeting, we have tested further options with you about how to weight the value of an employer's vote during ratification. You stated a preference for consistency and simplicity and asked that we engage further with BusinessNZ.
4. This briefing provides further advice on the ratification process for employees and employers in the FPA system including:
 - a. Who should run the ratification and verification process
 - b. What the ratification process should be, and
 - c. How employer votes should be weighted and counted.

We consider the following criteria to be important when assessing the options for employee and employer ratification processes

- d. Preserving adaptability: whether the option enables firms to adapt flexibly to shocks in the market, and adopt innovative practices without undue restrictions
- e. Legitimacy: whether the option ensures there is a mandate or social licence for an FPA, as well as including checks and balances appropriate to the scale of the intervention
- f. Workability: whether the option supports the smooth operation of the FPA system
- g. Simplicity: the process is clear to all parties and avoids unnecessary complexity
- h. Balance: whether the option strikes a suitable balance between certainty and flexibility for participants
- i. Consistency: whether the option is consistent with parallel interventions in the ERES regulatory system, unless there is a good reason for divergence.

Ratification process

5. In order for an FPA to come into effect, the FPAWG recommended the procedure for ratification be set in law, and that where parties reach agreement, conclusion should require ratification by a simple majority from both the employer and employee sides.
6. The purpose of ratification is to garner approval for the bargained FPA from those within its coverage before it is set in law and binding on those parties.
7. MBIE had advised the previous Minister that an FPA (unless determined by the Employment Relations Authority in full) should have to pass ratification before it is set in law.

8. You have decided that union bargaining parties should run employee ratification, but have not expressed a preference about who should run employer ratification, or what the ratification process should be.

Employee ratification to be run by unions

9. Unions have significant experience running ratification processes for collective bargaining under the ER Act. Under that Act, only union members are involved in those processes. Some of the considerations in regards to ratification processes that involve non-union members are freedom of association and privacy. Under the Equal Pay Amendment Act 2020, unions are given the role of running ratification processes that involve both union and non-union members. However, to manage the privacy impacts and freedom of association risks, employees are given an opportunity to 'opt out' of being a part of the union-led claim which means their contact details are not passed on to the union to later use during ratification. However, this also means any non-union employee who opts out is not able to participate in the ratification process. Similar considerations are needed for the FPA ratification process (we will advise on these risks and how to mitigate them in the ratification process below).
10. Some employees may choose to opt out of being contacted by the union; this may mean there is a risk that such employees do not know how to participate in the vote. We have provided advice on notification in ratification and are providing follow up advice on what additional safeguards you could put in place. (briefing 2021-1925 refers)

Employer ratification could be run by employer bargaining representatives or a government body

11. We have identified two options for who could run employer ratification:
 - a. Option 1: a government body
 - b. Option 2: employer bargaining representatives.
12. We have considered legislating a government body to run ratification, but do not think there is a strong rationale for a government body to run ratification for the employer- side only. We consider the most appropriate place for government intervention is the verification role, which allows oversight of both employer and employee-side ratification to ensure legitimacy.
13. During consultation on the FPA system in 2019, most submitters agreed that the Government's role in ratification was to provide financial and communication support, rather than lead the ratification process. The general themes of government support were: financial support during the FPA process, and support setting up systems for circulating information to workers and appropriate parties to ensure they are aware of when voting occurs and what the vote entails. Financial support was suggested both in terms of overall assistance throughout the process and ensuring workers are able to be paid by employers during the time in which the vote may take place.
14. We recommend that employer bargaining representatives run employer ratification. Employer bargaining representatives have, until the point of ratification, been appointed to run the bargaining process on behalf of employers and we do not consider there to be justification for why they should not continue their role for this part of the process. We note that running ratification votes is a new process for employer bargaining representatives, but consider there will be sufficient support through guidance materials, dispute resolution services and BusinessNZ.

We have identified two options for how the ratification process could be decided

15. There is a choice about how prescriptive the FPA legislation should be about how ratification is run. Some elements of the ratification process are essential to the achievement of the policy outcomes. If these are not specified it is possible that parties' ratification processes may not include these elements. On the other hand, a high degree of prescription could limit parties' flexibility to create a process that suits their circumstances.
16. **Option 1: Allow bargaining parties to decide their ratification process.** This option permits bargaining parties to create a bespoke process most workable and appropriate for their voters without any limits. While this option may be appropriate for employer ratification, we do not consider this lack of prescription to be appropriate for employee ratification where non-union members are involved. We are not satisfied that it imbeds enough safeguards to ensure that employees eligible to vote will receive sufficient information about the ratification process. This option may also be considered an inefficient use of time, particularly if there are a number of bargaining representatives on each side who are unable to agree to a process and require dispute resolution services.
17. **Option 2: Allow bargaining parties to decide their ratification process but legislate minimum requirements.** This option allows bargaining parties to tailor their ratification processes to one that is most workable and appropriate for their voters and adopt innovative practices without undue restrictions, while also building in sufficient safeguards to ensure eligible voters are notified and have sufficient information to cast their vote. As with option 1, there is a possibility that bargaining parties are unable to agree a process and require dispute resolution services. However we do not consider the risk to be as great because the minimum requirements means there are fewer matters to dispute.

A mixture of ratification processes are used in other current or planned bargaining systems

18. In collective bargaining under the ER Act, unions are required to notify the employer of the ratification process to be used, but the ratification process itself is not legislated.
19. Under the Screen Industry Workers Bill, the Employment Relations Authority (ER Authority) decides during initiation which worker organisation will conduct the ratification vote. The worker organisation must allow any eligible individual in coverage to vote, regardless of whether the individual is a member of the organisation. There is no legislated ratification process, but the process is checked by the ER Authority during initiation. When the time comes for the ratification vote, the worker organisation must publically notify the vote, with notification about matters like:
 - a. who is eligible to vote
 - b. the final date by which votes must be cast, and
 - c. the method by which votes may be cast.
20. The Equal Pay Amendment Act applies to claims that include union and non-union members. The ratification process is set by the union but it must meet legislated minimum requirements including:
 - a. providing employees a copy of the proposed pay equity claim settlement within a reasonable time before voting starts
 - b. giving reasonable notice to the employee that they are entitled to vote and the final day their vote must be cast, and
 - c. informing employees on the method of voting.

We recommend that bargaining parties decide their ratification process, but the process must meet legislated minimum requirements

21. We believe that allowing unions and employer bargaining representatives to agree their ratification processes, as long as it meets the legislated requirements, best balances the need for certainty and transparency with flexibility, and supports the workability of the system. We do not think a similar lack of prescription, as in the ER Act, is appropriate given the scale of FPAs and the need to involve non-union members in the ratification process.
22. Legislating minimum requirements will balance flexibility with ensuring key elements essential to transparency and legitimacy are present. For example, a minimum requirement could require that unions and employer bargaining representatives must provide at least one voting method that could be performed by distance. Requiring bargaining parties to evidence how they have met the minimum requirements would also provide the verification body with a set of information to make a judgement on whether they are confident in the ratification process that was run and the outcome.

Minimum requirements for ratification runs by unions

23. We consider the ratification process in the Equal Pay Amendment Act to be an analogous process that could be used as a basis for a minimum requirement in FPA ratification. The Equal Pay Amendment Act applies to claims that include union and non-union members.
24. We consider that the ratification process set by the union, must meet legislated minimum requirements that ensure that:
 - a. Each known employee in coverage of the FPA is entitled to vote
 - b. All votes have equal weight
 - c. When conducting the vote the union must record the employee's name, job title, outcome of the employee's vote, their employer's name and a way of contacting the employee, but cannot use this information except for the purposes of ratification and verification
 - d. Each known employee in coverage is provided with a copy of the proposed FPA within a reasonable time before voting starts
 - e. Each known employee in coverage of the FPA is given reasonable notice in writing (no shorter than at least 10 working days before the ratification is set to take place) –
 - i. that they are entitled to vote
 - ii. of the final date by which their vote must be cast
 - iii. of the method by which votes may be cast, which must include at least one avenue to vote from a distance e.g. online or proxy voting
 - iv. of the consequences of the union finalising the FPA (including that if a simple majority is achieved, the FPA will be verified and put into secondary legislation, or if a simple majority is not achieved it will return to bargaining or determination).

Minimum requirements for ratifications run by the employer bargaining representatives

25. We consider that the ratification process set by the employer bargaining representatives must also meet legislated minimum requirements that ensure that:
 - a. Each known employer in coverage of the FPA is entitled to vote
 - b. All votes have equal weight, but the number of votes an employer receives will vary according to the number of employees they have in coverage

- c. When conducting the vote, the employer bargaining representatives must record the employer's name, best estimate of the number of employees the employer has in coverage, number of votes cast, outcome of the employer's vote and a way of contacting the employer
- d. Each known employer in coverage is provided with a copy of the proposed FPA within a reasonable time before voting starts
- e. Each known employer in coverage of the FPA is given reasonable notice in writing (no shorter than at least 10 working days before the ratification is set to take place) –
 - i. that they are entitled to vote
 - ii. of the final date by which their vote must be cast
 - iii. of the method by which votes may be cast, which must include at least one avenue to vote from a distance e.g. online or proxy voting
 - iv. of the consequences of the employer bargaining representatives finalising the FPA (including that if a simple majority is achieved, the FPA will be verified and put into secondary legislation, or if a simple majority is not achieved it will return to bargaining or determination).

We said we would provide you further advice on what the process should be if ratification fails and then parties agree to substantially expand coverage

- 26. As you are aware, following a failed attempt to ratify an agreement the FPA would return to bargaining. Following a second failed attempt to ratify an agreement, the FPA would be referred to the ER Authority for a binding determination to set the terms and conditions of the FPA.
- 27. You agreed that the bargaining parties to an FPA should be able to negotiate changes to coverage at any point in the process (briefing 2021-1837 refers). We noted that if the system permits parties to bargain increases in coverage after ratification fails (for example, parties agree to expand coverage to include new occupations or industries) the new ratification would include workers and employers that were not involved in the first ratification. This may increase the risk that it fails ratification, which would then trigger a determination.
- 28. We said we would provide you further advice on whether broadening coverage should reset the process to get to determination (i.e. require another two failed ratifications).
- 29. On balance, we recommend maintaining two failed ratifications regardless of whether coverage is substantially expanded following a failed ratification. In addition, resetting the ratification each time that coverage is substantially expanded would likely be extremely costly for all parties and could result in perpetual bargaining. The parties may agree to expand coverage after a failed ratification but both parties should understand a possible consequence of broader coverage is that if ratification were to fail again that the FPA will go to the ER Authority for determination.

How employer and employee votes should be weighted

- 30. One of the key elements of the minimum requirements for the ratification process is how the votes are weighted when counted.

Employees

- 31. On the employee side, each employee in coverage should be entitled to vote and all votes from members and non-members of union bargaining parties should have equal weight.

Employers

32. On the employer side, the difference in employer size makes the question of how employer's votes will be weighted and counted in ratification more difficult.
33. We consider an employer to be eligible to vote where they have at least one employee who falls in coverage of the FPA, and that any ratification process where the weight of an employer's vote is linked to their number of employees should be determined by the number of employees they have in coverage of the FPA, rather than the number of employees employed by the business.
34. We had identified 5 options for weighting an employer's vote, each of which has different impacts on employers. A full description of the options is presented in **Annex Two**. The significance of those impacts and how influential an employer's vote is at ratification will depend on how the employee votes are weighted, i.e. how many employees they have in coverage of the FPA. The pie graphs at **Annex Three** provide an insight into the impacts of the different weights for the economy and at an industry level, and demonstrate that no one option provides a consistent distribution.
35. Each option is linked to specific principles and outcomes, such as a larger or smaller 'voice' for larger or smaller employers. The principles we have been considering against the options are workability, simplicity, transparency, proportionality and certainty.

Submitters were divided on 'one vote per enterprise' and 'votes in proportion'

36. Submissions from workers were divided evenly between counting employers as one vote per business, or counting them as a proportion of workers employed within coverage. Employers who supported a one vote per business approach argued this would allow small businesses to maintain a voice during the process. The New Zealand Law Society favoured a proportionate vote as a more accurate representation of all parties, as opposed to one vote per business. Although this risks smaller businesses being more easily outvoted by businesses with a larger number of workers, larger businesses are potentially more affected by the impact of an FPA. Exemptions for smaller businesses may go some way to address this. Six submitters (including CTU) suggested that employers should decide among themselves, or should bring their own ratification systems to the negotiation table.

We engaged further with BusinessNZ about the weight of an employer's vote

37. BusinessNZ did not express a preferred option but did note that given the scale of possible coverage, any ratification process would need to be easy to understand and workable. BusinessNZ considered that weighting according to demographics would require constant adjustment to avoid accusations of unfairness.
38. BusinessNZ had strong concerns that employers would not be notified of the ratification vote and therefore miss the opportunity to cast an informed vote. They do not consider employer organisations or unions to have sufficient reach to notify parties. We have independently identified this risk, and we have provided advice about the notification and communication obligations placed on bargaining parties to use best endeavours to inform affected parties (briefing 2021-1925 refers). BusinessNZ also considers that employers are disadvantaged in FPA ratification because in collective bargaining in the ER Act, employees do not ratify an agreement that employers have not already approved.

Other ratification processes do not require employer votes to be weighted

- 39. Collective bargaining ratification in the ER Act does not consider how to weight an employer's vote because employer ratification is not needed. In enterprise level collective bargaining employers represent themselves at bargaining and therefore do not need to empower a representative to enter into a collective agreement on their behalf. The Screen Industry Workers Bill does not require employer ratification: only ratification by workers is necessary before a collective contract is concluded.

There is no option that sufficiently reflects all key principles

- 40. The way a vote is weighted differs significantly between the whole economy and individual industries due to differences in make-up. While deciding at an industry level would somewhat mitigate this problem, it is likely to be complex and would lack transparency and certainty.
- 41. You initially expressed that votes should be proportionate to the number of employees an employer has. We have discussed this issue with you on 10 February 2021 and 17 February 2021, and you have since decided that employers should receive one vote per employee in coverage with a sliding scale of weighted votes for small and medium employers. A sliding scale would mean an employer receives 2 votes for the first employee, 1.95 votes for the second employee, 1.9 votes for the third employee and so on until the weighting levels out to 1 vote per employee. This would only be applicable for employers whose absolute number of employees in coverage falls within the weighted scale. This scale would mean that:
 - a. an employer with 5 employees would receive 9.5 votes
 - b. an employer with 20 employees would receive 30.5 votes
 - c. an employer with 21 employees would receive 21 votes

Should there be a verification step after ratification to check processes and thresholds?

- 42. Our earlier recommendation that bargaining parties should decide their ratification process (with minimum requirements), may limit the level of transparency during the ratification process and therefore the ability for outside parties to confirm that correct processes have been followed and the threshold met. This could affect the perceived legitimacy of the FPA. An independent verification check would help to mitigate this risk and would provide an opportunity for concerns of legitimacy to be raised.
- 43. Therefore we recommend the ratification process is two-fold:



- 44. The purpose of verification is to confirm that:
 - a. The agreed ratification processes were followed,
 - b. Statutory minimum requirements for ratification were complied with, and
 - c. A simple majority was achieved on the employer and employee side.

We consider it appropriate for a government to conduct verification as the FPA will be set in secondary legislation

45. We believe it to be appropriate that a government body conducts the verification check to ensure the legitimacy of the bargained FPA. It is appropriate that a government body conducts the verification check because it is independent from the parties that established the ratification processes and conducted the ratification votes.
46. Given the FPA will be set in secondary legislation, we consider the Government body should have an obligation to confirm they are comfortable with the processes run and the outcome of the ratifications.

The system includes mitigations to reduce the risk that the legitimacy of the ratification is compromised

47. We consider there to be two scenarios that could undermine the legitimacy of the ratification:
 - a. Where a large number of eligible voters were not notified about ratification and missed their opportunity to vote, and
 - b. Where bargaining parties have intentionally or recklessly provided inaccurate information as part of the evidence in support of the ratification results.
48. As proposed above, the verification process should focus not just on the validity of the results reported, but also the process that was followed to ensure it was adequate.
49. If the verification process identifies any issues with the ratification process or results reported (e.g. it included inaccurate information) then the verification body would take appropriate steps. This could include requiring the ratification process to be run again (at the expense of the bargaining party) in a way that meets the minimum requirements or removing the inaccurate information from the count. The risk of having to bear these costs is likely to incentivise initial compliance with the minimum requirements for ratification.
50. If an issue with the ratification process or results is discovered after the FPA has been verified, a party could apply for a judicial review of the decision made by the verification body. This could result in the validity of the FPA being challenged and subject to the remedies of the Court.
51. To mitigate this risk, the verification process will need to be robust. In support of this, we have proposed that:
 - a. the Government body responsible for this process has power to call for further information;
 - b. bargaining teams responsible for holding the ratification vote be required to keep a record of the process undertaken and the votes collected; and
 - c. a penalty be set for intentionally or recklessly providing inaccurate information as part of the ratification evidence (briefing 2021-1989 refers).
52. Additional safeguards are proposed in the system help raise awareness of an FPA in order to mitigate the risk of a large number of eligible voters being unaware of the ratification process. These include:
 - a. threat of compliance orders and penalties where the notification and communication obligations are not fulfilled;
 - b. the ability for unions to access workplaces; and

- c. awareness raising activity by the Government and peak bodies.
53. We also consider that there is likely to be multiple opportunities for eligible voters to become aware of an FPA as it progresses through initiation and bargaining.

Next steps

54. We are providing separate advice on the remaining aspects of the design of the FPA system required to seek Cabinet approval to draft the Bill and to inform drafting instructions.

Annexes

Annex One: Pay Equity claims ratification process

Annex Two: Options considered for weighting an employer's vote

Annex Three: Pie graph modelling for weighting an employer's vote

Annex One: Pay Equity claims ratification process

Settling pay equity claim

13ZF Requirement for union to obtain mandate before settling pay equity claim

(1) This section applies to—

- (a) a union that is the claimant in a pay equity claim; and
- (b) each employee who is covered by the union-raised claim (proposed settlement employee).

(2) The union must establish a process for proposed settlement employees to vote on whether to approve or decline a proposed pay equity claim settlement.

(3) The union must, before the process begins, give notice of the process to—

- (a) the proposed settlement employees; and
- (b) the employer or employers who are parties to the claim.

(4) The process must ensure that—

- (a) each proposed settlement employee is entitled to vote and all votes have equal weight; and
- (b) each proposed settlement employee is provided with a copy of a proposed pay equity claim settlement within a reasonable time before voting starts; and
- (c) each proposed settlement employee is given reasonable notice—
 - (i) that they are entitled to vote; and
 - (ii) of the final date by which their vote must be cast; and
 - (iii) of the method by which votes may be cast; and
 - (iv) that, if the proposed pay equity claim settlement is approved, the union must sign it; and
 - (v) of the consequences of the union entering into the settlement (including that the employee's employment contract will be varied and the employee will lose the ability to bring their own claim relating to pay equity); and
 - (vi) that the final date by which their vote must be cast is also the final date on which employees who are not members of the union may opt out under section 13Y.

Annex Two: Options considered for weighting an employer's vote

Option 1: One vote per enterprise. This option allows every employer with employees in coverage an equal vote. This means the vote of large employers, who are likely to have more employees in coverage of the FPA and therefore to be more affected by the new terms and conditions bargained will be worth the same as a small employer who may not be affected to the same extent. Because the number of small employers vastly outweighs the number of large employers, the vote of large employers will be drowned out. However, large employers are more likely to have been engaged with or members of the bargaining party at the bargaining table while the FPA was being negotiated and be resourced to implement the new terms and conditions.

Option 2: One vote per employee in coverage. This option allows the employers who have the greatest number of employees in coverage to have a greater say at ratification which will favour large employers. This proportionality will disadvantage small employers whose ability to meet the terms and conditions may be limited and whose vote will be significantly overshadowed by the vote of large businesses.

Option 3: One vote per 10 employees in coverage. This option allows employers who have a greater number of employees in coverage to have a greater say, but weights the vote in favour of small employers to safeguard the vote being overrun by large employers. For example, if employers received 1 vote per 10 employees in coverage, an employer with 2 employees in coverage would get 1 vote, an employer with 19 employees in coverage would get 2 votes and an employer with 71 employees in coverage would get 8 votes. If you wish, we are able to replace the number of employees in coverage per one vote (in this case, 10) with another number. The greater the number of employees per 1 vote, the more weight a small employer is given at the cost of a larger employer.

Option 4: Allocate a set number of votes to employee size blocks e.g. 1-19 employees = 1 vote; 20-99 = 10 votes; 100 - 499 = 50 votes; 500+ = 70 votes. This option allows employers who have a greater number of employees in coverage to have a greater say, but provides a safeguard for small employers by swinging the weight of the vote in their favour to ensure their vote is not drowned out by large employers. This option does not require the same level of accuracy as the option above when counting employee numbers, but still achieves a level of proportionality. We note that this option does not solve the problem of what the weighting should be, and we would need to confirm the value of the vote allocated to each block to determine the impacts of this option.

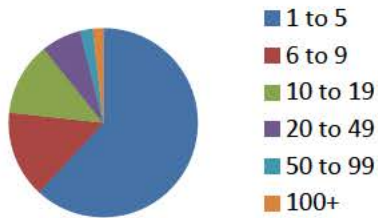
Option 5: Leave it to bargaining parties to decide how employer votes will be weighted (or a default option could be chosen from one of the above options). This option is a high trust model that allows employer bargaining representatives, who have a greater understanding of the industry/occupation to decide what a suitable weighting is for employer votes. Because this option provides the greatest level of flexibility to employer bargaining representatives, it could also lead to disputes or litigation if consensus cannot be reached on an appropriate weighting. This option could be used alone, or in conjunction with one of the other options as a default option, if employer representatives are unable to agree

In options 2, 3 and 4 where there is an element of proportionality, it may be difficult and time consuming for all employers, particularly larger ones, to have completely accurate information as to their number of employees and employees in coverages at any given time. The degree to which an employer will face this problem, and therefore the workability, varies between each option depending on the level of accuracy that is required. For example, the level of accuracy required in option 2 is greater than in option 3 and 4. This also has implications for verification and the ability for the verification body to reconcile the number of votes an employer is entitled to with how many they have cast.

Annex Three: Pie graph modelling for weighting an employer's vote

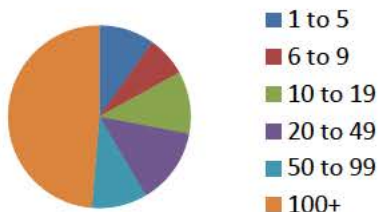
Whole economy

A) One vote per enterprise



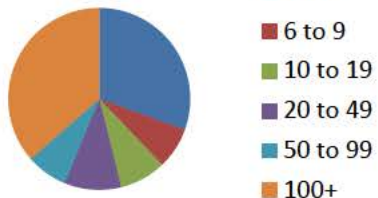
1 to 5	94,584	62%
6 to 9	22,704	15%
10 to 19	19,074	12%
20 to 49	10,491	7%
50 to 99	3,333	2%
100+	2,688	2%
Total	152,874	100%

B) One vote per employee



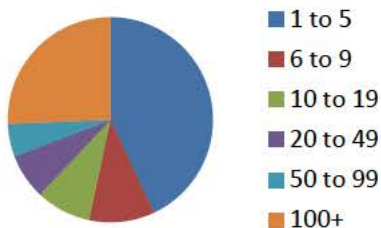
1 to 5	228,700	10%
6 to 9	164,600	7%
10 to 19	255,800	11%
20 to 49	313,700	14%
50 to 99	227,200	10%
100+	1,127,300	49%
Total	2,317,300	100%

C) One vote per 10 employees



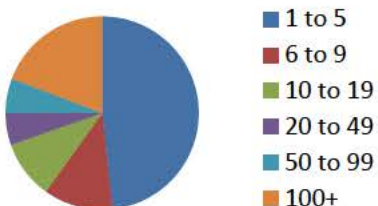
1 to 5	94,584	31%
6 to 9	22,704	7%
10 to 19	25,580	8%
20 to 49	31,370	10%
50 to 99	22,720	7%
100+	112,730	36%
Total	309,688	100%

D) One vote per 20 employees



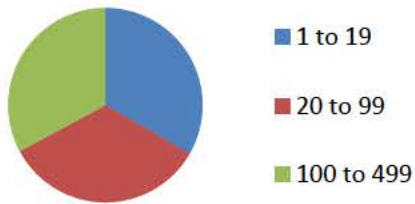
1 to 5	94,584	43%
6 to 9	22,704	10%
10 to 19	19,075	9%
20 to 49	15,685	7%
50 to 99	11,360	5%
100+	56,365	26%
Total	219,773	100%

E) One vote per 30 employees



1 to 5	94,584	48%
6 to 9	22,704	12%
10 to 19	19,075	10%
20 to 49	10,456.67	5%
50 to 99	11,360	6%
100+	37,576.67	19%
Total	195,756	100%

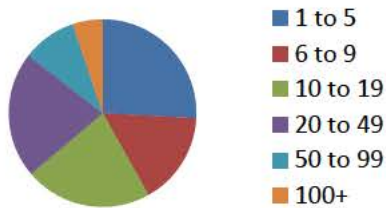
F) Allocating votes per bucket



1 to 19	136,362	33%
20 to 99	138,240	34%
100 to 499	134,400	33%
500+	?	
Total	409,002	100%

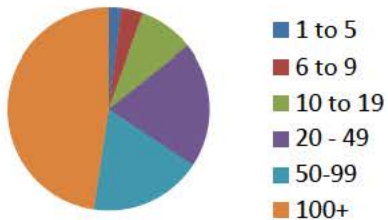
Education and training industry

G) One vote per enterprise



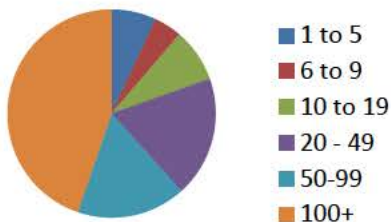
1 to 5	1,437	26%
6 to 9	888	16%
10 to 19	1,218	22%
20 to 49	1,206	22%
50 to 99	519	9%
100+	285	5%
Total	5,553	100%

H) One vote per employee



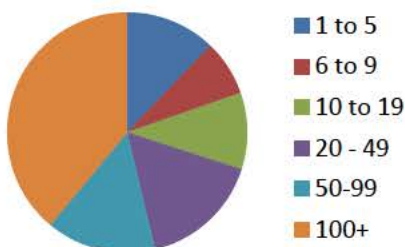
1 to 5	4,050	2%
6 to 9	6,600	3%
10 to 19	17,100	9%
20 to 49	38,600	20%
50 to 99	34,900	18%
100+	92,100	48%
Total	193,350	100%

I) One vote per 10 employees



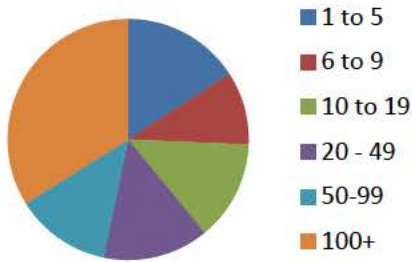
1 to 5	1,437	7%
6 to 9	888	4%
10 to 19	1,710	8%
20 to 49	3,860	19%
50 to 99	3,490	17%
100+	9,210	45%
Total	20,595	100%

J) One vote per 20 employees



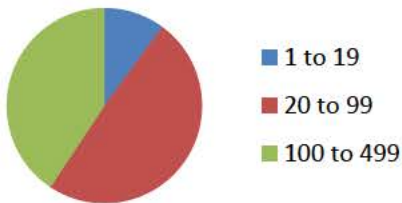
1 to 5	1,437	12%
6 to 9	888	8%
10 to 19	1,218	10%
20 to 49	1,930	16%
50 to 99	1,745	15%
100+	4,605	39%
Total	11,823	100%

K) One vote per 30 employees



1 to 5	1,437	16%
6 to 9	888	10%
10 to 19	1,218	13%
20 to 49	1,286.67	14%
50 to 99	1,163.33	13%
100+	3,070	34%
Total	9,063	100%

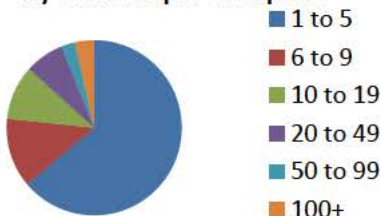
L) Votes per employee block



1 to 19	3,543	10%
20 to 99	17,250	49%
100 to 499	14,250	41%
500+	?	
Total	35,043	100%

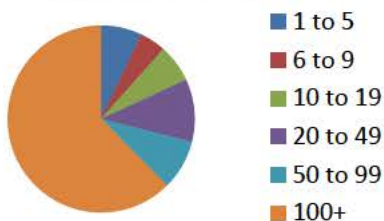
Admin and support services

M) One vote per enterprise



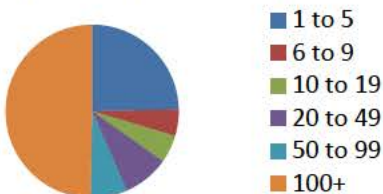
1 to 5	3,747	64%
6 to 9	750	13%
10 to 19	591	10%
20 to 49	420	7%
50 to 99	150	3%
100+	207	4%
Total	5,865	100%

N) One vote per employee



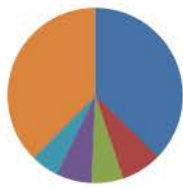
1 to 5	8,600	7%
6 to 9	5,400	4%
10 to 19	7,900	7%
20 to 49	13,100	11%
50 to 99	10,400	9%
100+	75,400	62%
Total	120,800	100%

O) One vote per 10 employees



1 to 5	3,747	25%
6 to 9	750	5%
10 to 19	790.00	5%
20 to 49	1,310	9%
50 to 99	1,040	7%
100+	7,540.00	50%
Total	15,177	100%

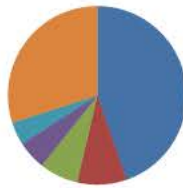
P) One vote per 20 employees



- 1 to 5
- 6 to 9
- 10 to 19
- 20 to 49
- 50 to 99
- 100+

1 to 5	3,747	37%
6 to 9	750	7%
10 to 19	591	6%
20 to 49	655	7%
50 to 99	520	5%
100+	3,770	38%
Total	10,033	100%

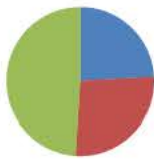
Q) One vote per 30 employees



- 1 to 5
- 6 to 9
- 10 to 19
- 20 to 49
- 50 to 99
- 100+

1 to 5	3,747	45%
6 to 9	750	9%
10 to 19	591	7%
20 to 49	436.67	5%
50 to 99	346.67	4%
100+	2,513.33	30%
Total	8,385	100%

R) Votes per employee block



- 1 to 19
- 20 to 99
- 100 to 499

1 to 19	5,088	24%
20 to 99	5,700	27%
100 to 499	10,350	49%
500+	?	
Total	21,138	100%