MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

BRIEFING

Fair Pay Agreements: Advice on Employer Representation

Date:	20 May 2021	**Priority:**	High
Security classification:	In Confidence	**Tracking number:**	2021-3525

Action sought		
	Action sought	**Deadline**
Hon Minister Wood **Minister for Workplace Relations & Safety**	**Agree** to the approach for specifying requirements for employer bargaining parties, including the verification process.	24 May 2021

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Tracy Mears	Manager, Employment Relations Policy	Privacy of Natural Persons	✓
Stacey Campbell	Senior Policy Advisor, Employment Relations Policy		

The following departments/agencies have been consulted

Minister's office to complete:

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

Comments

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Purpose

To provide you updated advice on our recommended approach to employer representation, whether a limit on either the bargaining side or parties is feasible and what steps should be taken to verify the bargaining side.

Executive summary

Cabinet agreed to provide you delegated authority to make decisions on requirements for employer bargaining representatives, including their structure/form, degree of representativeness and government oversight in their selection. It was also agreed that some decisions may need to be mirrored for union bargaining parties, for example, limits on the number of bargaining representatives.

We recommend that an employer bargaining side must be made up of one or more employer associations that meet certain criteria, including that they are an incorporated society that can promote both members and non-members collective interests. This is intended to ensure that they have a legal form, constitution and rules that enable them to represent affected parties.

If there are a number of organisations that meet the requirements, they would all be able to be part of the bargaining side and should make their own arrangements about how to work together. We do not think it would be appropriate to require a single 'most representative' bargaining party, require a minimum level of 'representativeness', or limit the number of bargaining representatives per side as such measures would impact workers' and employers' ability to choose who they are represented by.

We have recommended that each bargaining side be required to notify MBIE when their bargaining side has been established, but no later than three months after initiation (this is when the default of BusinessNZ would commence). Each bargaining side would need to provide the required information to demonstrate that each entity proposed to be on the bargaining side meets the representation criteria.

We have recommended that MBIE verifies that each bargaining party meets the representation criteria. Once MBIE has verified this for the bargaining side, the bargaining side will have 20 workings days to agree how they will progress and make decisions for FPA bargaining.

Recommended action

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

a **Note** Cabinet agreed to provide you delegated authority to make decisions on requirements for employer bargaining representatives, including their structure / form, degree of representativeness and government oversight in their selection. It was also agreed that some decisions may need to be mirrored for union bargaining parties, for example, limits on the number of bargaining representatives.

Noted

b **Agree** that in order for an employer to be a bargaining party it must be an employer association that has at least one member who is an employer with an employee in proposed coverage and be an incorporated society and meets the following specified requirements:

- the object or *an* object of the society enables it to promote affected parties collective work interests (including members and non-members) for the purposes of FPA bargaining; and
- the society's rules are democratic, not unreasonable, not unfairly discriminatory or unfairly prejudicial, and not contrary to law; and
- the society's rules contain a provision relating to the process for holding one or more secret ballots for the purposes of the FPA; and
- the society is independent of, and is constituted and operates at arm's length from any worker organisation.

Agree / Disagree

c **Agree** that in order for a union to be a bargaining party the union must have at least one member within proposed coverage, be a registered union and the object or an object of the union must enable it to promote affected parties collective work interests (including members and non-members) for the purposes of FPA bargaining.

Agree / Disagree

d **Note** further work is needed to understand whether existing public sector bargaining entities or agents have a legal form, constitution and rules that could enable it (or could be suitably amended to enable it) to represent all affected parties (including any private employers). We will be considering this further as part of the drafting of the Bill.

Noted

e **Agree** that the system will allow any incorporated society (on both the worker or employer side) that meet the requirements specified in recommendation (b) or (c) to form part of the employer or employee bargaining side as appropriate and therefore:

a. Not require a single 'most representative' bargaining representative on each side
b. Not require bargaining representatives to meet a minimum threshold of representativeness or include any limits on the number of bargaining representatives that can be part of the bargaining party on one side.

Agree / Disagree

f **Agree** MBIE must verify that the entities who apply to be a part of the bargaining side meet the representation criteria that:

a. For unions, that the union has at least one member in proposed coverage, is a registered union and its objective is broad enough to allow it to represent non-members for FPA bargaining.
b. For employer associations, that the employer association has at least one member who is an employer with an employee in proposed coverage and meets the criteria proposed at recommendation (b).

Agree / Disagree

g **Note** you have previously agreed that each bargaining side would be required to develop an agreement about their approach to bargaining within 20 working days of representatives being set. There is currently no trigger for when the 20 working days should start from either the union or employer bargaining sides.

Noted

h **Agree** that each bargaining side be required to notify MBIE when their bargaining side has been established, but no later than three months after initiation, and provide the required information to demonstrate that each entity proposed to be on the bargaining side meets the representation criteria.

Agree / Disagree

i **Agree** that the 20 working days to develop an agreement about the approach to bargaining commence once MBIE has verified that the bargaining side meets the representative criteria.

Agree / Disagree

j **Agree** that MBIE checks the initiating union meets the representation criteria as part of the initiation process and if no further unions apply to be part of the bargaining side within three months that the initiating union be the bargaining side for all employees within coverage.

Agree / Disagree

k **Note** that any union or employer association can apply to be a part of the bargaining side at any point in the process.

Noted

l **Agree** that if a bargaining party joins a bargaining side after the bargaining side agreement is set, parties are not required to review the bargaining side agreement but are required to consider whether to amend the agreement to reflect the new construct of the bargaining side.

Agree / Disagree

m **Agree** that where bargaining is consolidated (either voluntarily or as a result of a requirement) a new bargaining side is able to request a review of the 'bargaining side agreement' within 20 working days of joining the existing bargaining side.

Agree / Disagree

n **Agree** that where a review is requested under the circumstances outlined in recommendation (m), the bargaining side must, within 20 working days from the request, agree to a revised bargaining side agreement or agree that the existing bargaining side agreement stands.

Agree / Disagree

Tracy Mears
Manager, Employment Relations Policy
Workplace Relations & Safety Policy, MBIE

20 / 05 / 21

Hon Minister Wood
Minister for Workplace Relations & Safety

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

Background

1. In January 2021 we provided you advice on the requirements for employer bargaining representatives [briefing 2021-1724 refers]. We recommended that employers need to meet similar requirements as unions under the Employment Relations Act 2000 (the ER Act), including being an incorporated society. This was intended to ensure that they have a legal form, constitution and rules that enable them to represent affected parties.

2. We did not recommend requiring a single 'most representative' bargaining party, a minimum level of 'representativeness', or limit the number of bargaining representatives per side as such measures would impact on workers' and employers' ability to choose who they are represented by.

3. We heard feedback at the mock Fair Pay Agreement session that requiring an incorporated society would be too high a barrier for some employers and that it was an unnecessary procedural step. This feedback was given in the context of how the previous Award system worked in New Zealand, where there were no formal requirements for how the employer representatives formed the employer bargaining side (and no obligations or duties), other than having a limit of 10 representatives.

4. Cabinet agreed to provide you delegated authority to make decisions on any requirements for employer bargaining representatives, including their structure/form, degree of representativeness and government oversight in their selection [CAB-21-MIN-0126 refers]. It was also agreed that some decisions may need to be mirrored for union bargaining parties, for example, limits on the number of bargaining representatives.

5. Cabinet agreed that BusinessNZ would be the default employer representative where the sector has not been able to form a bargaining side within a specified timeframe. You have indicated that this timeframe should be three months.

6. This briefing provides you with further advice on what the employer representation requirements should be, whether there should be limitations on the number of bargaining representatives and the process requirements around setting a bargaining side.

Requirements for employer representation

7. When assessing the options we considered the option against the following criteria:

    - Enduring: Promotes an enduring solution that supports the outcomes of the system, including any possible ongoing requirements for the bargaining side.

    - Legitimacy: whether the option ensures there is a clear mandate and a process for the parties to choose who they want to represent their interests.

    - Minimises risk: Reduces the risk of liability falling to an individual bargaining representative rather than to the bargaining side and reduces the risk of conflicts of interest. Enables the bargaining representatives to abide by their statutory duties and obligations (for example, the duty to represent both members and non-members interests).

    - Is workable: whether the option supports the smooth operation of the FPA system.

    - Is consistent with international obligations: whether the option supports compliance with our international obligations. For instance, the right to freedom of association.

8. To be a workable option, the requirements for employer representatives should, at a minimum:

    - **Enable freedom of association** so an employer can choose who they wish to represent their interests.

    - **Enable a clear mandate to represent the employers within that occupation or industry.** This could take the form of either a democratic form of decision making from the employer bargaining side *or* government oversight that the employer representatives chosen represent the most representative organisations who wish to participate in that industry or occupation.

    - **Include democratic rules that govern the actions/processes of the employer representatives.** This ensures that employer representatives decision-making and processes are governed by a system agreed upon by the employers impacted by the initiation of the FPA. This is an important mechanism to ensure transparency in decision making and processes so that obligations can be enforced.

    - **Include an ability to represent both members and non-members** (and hold the representatives accountable where this requirement is not met) and reduce the risk of conflict of interests of the bargaining representatives.

9. We explored options that provided for the minimum requirements, and assessed these against the criteria.

Option One: No formal legal structure required for the bargaining party, but government oversight of processes and representativeness

10. We considered the feasibility of not having any formal requirements on legal structure for an employer association. In practice this would mean an individual could be put forward as a bargaining representative to act on behalf of an employer or employers.

There is a risk that conflicts of interests may arise

11. If an employer puts forward an agent that is not independent i.e. a director or board member, there is a risk that the obligations on the bargaining party would directly conflict with the interests they have to manage the company in a way that benefits the company's shareholders.

12. To mitigate this risk we consider, at a minimum, that there would need to be an independent body that checks that the representative is able to represent both members and non-members and that there are no conflicts of interests or the conflicts of interest can be sufficiently mitigated. For example, an independent advocate who is able to represent the interests of the bargaining side.

There could be a risk placed on bargaining representatives as individuals where they are seen to have breached their obligations

13. The previous Award system in New Zealand did not have good faith obligations on bargaining sides or bargaining representatives, it also did not include an obligation to represent both members and non-members. There is a risk that some employers may be dissatisfied with the level of communication and responsiveness of bargaining representatives. This may open up disputes about whether the bargaining representative breached their obligations with the potential for penalties to be incurred.

14. To mitigate this risk we consider, at a minimum, that there would need to be an independent body that checks either that the representatives chosen are the most representative for that sector or industry, or that the process to elect those representatives is democratic and provides for input from those in the sector.

Without significant oversight, the bargaining party may not be representative of the employer bargaining side

15. Without a democratic decision making process or government oversight, there is a risk that the bargaining parties put forward to represent the employers bargaining side may not have a mandate to represent a significant proportion of employers in that sector. While the good faith obligations and the obligation to represent both members and non-members attempt to mitigate this, without significant oversight in who is put forward and how they are chosen, there is a risk that only the larger employers, for example, are represented at the table.

There is no mechanism for ongoing coordination on the employer bargaining side

16. This option does not promote an enduring solution to the gap in sector-wide dialogue that exists in some sectors in New Zealand. It is unlikely to create an enduring structure, rather, it is reliant on individuals to maintain the position of employer representatives over time.

While this option is feasible, we do not recommend it

17. In order to be viable, at a minimum, this option would require a process (via an independent body) to verify representativeness and mitigate or partially mitigate the risks raised above. We consider that this option could still pose real risks that more resourced employers could control and influence the process without genuinely taking into account the interests and considerations of smaller employers. Employers may use the platform to remove smaller competitors and to gain a greater share of the market. While the obligations on the bargaining side try to prevent this it is likely difficult to prove and prevent in practice without democratic decision making and accountability.

18. This option could create freedom of association risks because once the team is set employers are less likely to be able to have a further say in who represents them regardless of the effectiveness of the representatives (without first needing to go to an independent body to appoint or remove representatives).

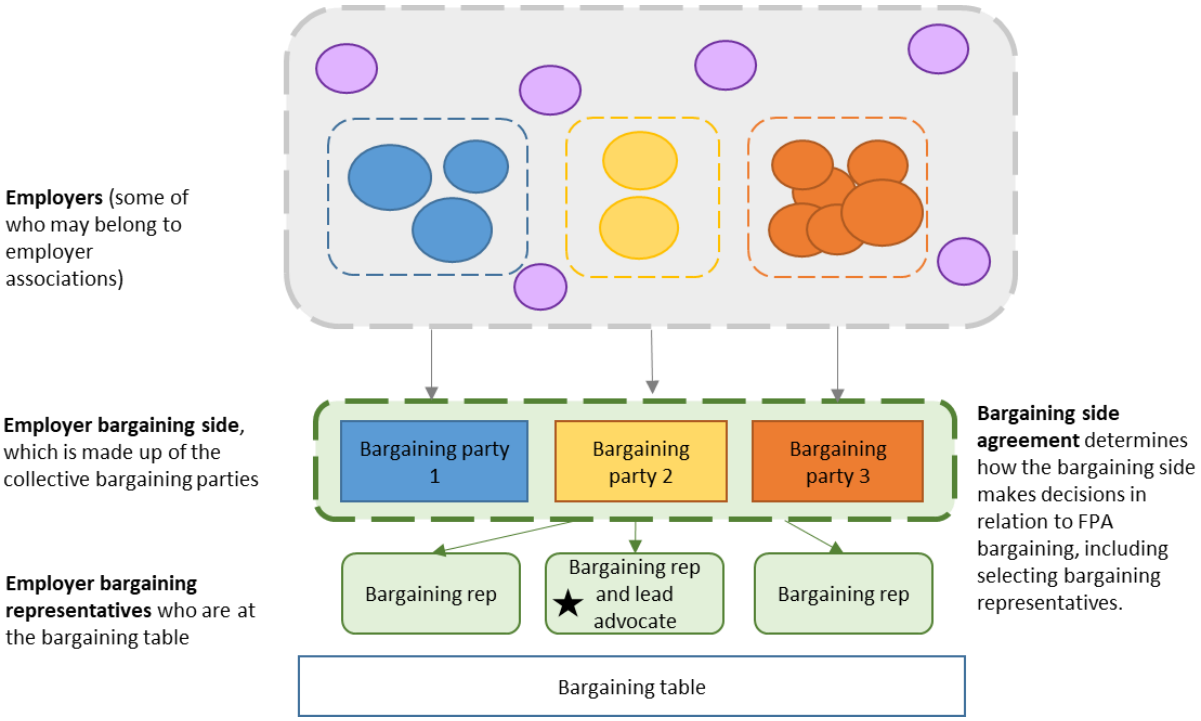
19. This option also introduces greater risk for the individuals that are put forward as bargaining representatives as they would be liable to uphold the obligations of the bargaining side as individuals (and could be penalised where there is a breach). This could create difficulty where they need to both manage a real or perceived conflict of interest with their obligations to represent all affected parties within coverage on their side.

20. Finally, this option does not create an enduring structure that promotes sector-wide dialogue.

Option Two: To form part of the bargaining side, an entity must meet certain criteria

21. For clarity, for the purposes of option 2, we define a bargaining representative as an employer representative involved in bargaining an FPA (someone who has been chosen from the bargaining side to represent the bargaining side's interests at the bargaining table). The bargaining side refers to the group of bargaining parties that collectively represent employers, and which collectively decide the mandate and instruct the bargaining representatives. An entity would need to meet certain criteria before they can be a bargaining party and therefore form part of the bargaining side. A diagram of how the representative structure for option 2 is proposed to work is set out below.

Diagram 1: Proposed model of employer representation under Option 2



22. This is our previously recommended option (briefing 2021-1724 refers). Like unions who must be registered as an incorporated society under the ER Act, this option proposes that only employer associations that meet certain criteria (including being an incorporated society) are able to be a bargaining party on the employer bargaining side. There could be multiple employer associations that meet the criteria and be part of the employer bargaining side.

23. The criteria would include:

- being registered as an incorporated society; and
- the object or *an* object of the society enables it to promote affected parties collective work interests (including members and non-members) for the purposes of FPA bargaining; and
- the society's rules are democratic, not unreasonable, not unfairly discriminatory or unfairly prejudicial, and not contrary to law; and
- the society's rules contain a provision relating to the process for holding one or more secret ballots for the purposes of the FPA; and
- the society is independent of, and is constituted and operates at arm's length from any union.

24. We have revised the criteria to make it explicit that one of the objects of the incorporated society must allow it to represent both members and non-members for the purposes of FPA bargaining, this was inferred in our previous criteria [briefing 2021-1724 refers]. This object is important because officers of incorporated societies have a duty to act in what they believe are the best interests of the society – this will be informed by the statement of objectives in the societies' constitutions. This requirement would also need to apply to unions that are part of the employee bargaining side of an FPA.

This option would likely build more enduring sector-wide employer coordination and make sure there is democratic decision making within bargaining parties (to members and non-members)

25. Requiring bargaining to occur through employer associations will likely build more enduring sector-wide employer coordination and capability that will contribute to the success of the FPA system. Putting in place a longer-term entity will also mean that if there are ongoing obligations for the bargaining sides (for example, if variations to the FPA are required) then there is an entity in place that can take on the ongoing role. An ongoing role is not consistent with individuals who are appointed temporarily to bargain the FPA at the outset. It also provides a mechanism for sharing the load of the FPA bargaining costs, for example, an employer association may recoup the costs through membership fees.

26. Requiring that a bargaining party be an incorporated society also means individuals would not be responsible or liable where good faith and other obligations have not been met, rather this would fall on the bargaining side (the incorporated entities that form the bargaining side). This provides the right incentives to ensure the bargaining side abides by their bargaining obligations to, for example, provide regular updates and provide an avenue for feedback.

27. The criteria also ensure that there is democratic decision making processes in place that would ensure employer representatives are chosen on a democratic basis. This limits the need for government oversight and reduces the risk of larger employers being the only voices around the bargaining table.

28. Under this option if employers were dissatisfied with their representatives they could either form their own employer association or encourage another existing employer association to join. This option requires less government oversight, as any party that meets the criteria could participate on the bargaining side and the democratic decision-making and transparency in processes is required to be built into the constitution of the incorporated society.

However it does create a significant entry barrier for industries or occupations where there is low levels of coordination and/or no existing employer associations

29. This option does create an entry barrier by requiring a process to occur before a group of employers could form a bargaining party and become part of the bargaining side. This in itself would take time for employers to coordinate and agree their constitution, rules and other factors (such as a membership payment structure to support the costs of bargaining). Where no existing employer associations exist that meet the criteria, requiring them to be an incorporated society risks that no entity will come forward to be a bargaining party for the employer bargaining side. In this instance BusinessNZ would be the default representative.

30. We note that these requirements are equivalent to the requirements for unions now and under the FPA system.

On balance we recommend option 2

31. Both options carry significant risk: option 1 carries the risk that those chosen to represent the employer bargaining side will have competing interests and are largely controlled or influenced by more resourced employers with a lack of accountability and transparency in decision making. Option 2 will create a more transparent and democratic process, however, will put in place a significant entry barrier, especially to uncoordinated sectors that do not already have an employer association in place.

32. On balance we consider that option 2 is most workable. It incentivises more enduring sector-wide institutions, promotes ongoing coordination after the FPA is agreed, and ensures employers are able to choose who represents them with adequate safeguards to ensure the processes and decision-making within bargaining parties is democratic and transparent.

If you were to progress with option 2: the system may need to include flexibility for public sector bargaining entities or agents if they still meet the intent of the requirements

33. FPAs may occur in sectors where the Crown is the only, or the main, employer. Some of these sectors already have bargaining entities or agents responsible for collective bargaining. For instance:

    - Central Region Technical Advisory Services Limited (TAS) bargains on behalf of District Health Boards as an employer and is a crown-owned subsidiary.
    - The Secretary of Education bargains on behalf of School Boards during collective bargaining in the Education Sector.

34. We are still exploring whether public sector bargaining entities or agents have a legal form, constitution and rules that enable them (or could be suitably amended to enable it) to represent all affected parties (including any private employers). We consider that it would make sense to enable them to be a bargaining representative in the FPA system. However, we will be considering this further as part of the drafting of the Bill.

Limits on the number of bargaining representatives

35. We received feedback from certain participants at the mock FPA bargaining session that the number of representatives should be limited to 10 per bargaining side. At the time we sought an initial view from BusinessNZ who said a limit was sensible and acknowledged that was how it worked under the previous Award system. We also sought your views at an official's meeting and you agreed that the limit sounded sensible.

36. As we still needed to do further work on the form and structure of employer representatives, we recommended you seek a Cabinet delegation to explore whether there should be limits on the number of bargaining representatives, as the two areas are inherently linked. We also had not yet fully explored the implications of applying a limit. For example, whether this could impact on freedom of association and whether or not you would need oversight on whether the bargaining parties selected are the most representative.

37. Since the writing of the Cabinet paper we have sought views from BusinessNZ and the CTU on their preference for a limit. We also sought clarification about whether the limit they had envisaged applied to representatives appointed by the bargaining side to be at the bargaining table or how many parties could form the bargaining side.

38. BusinessNZ, on reflection, did not think a limitation should be placed on either the number of representatives that could be around the bargaining table, or to the bargaining side. They thought that either option would set an arbitrary number and would likely infringe on freedom of association, especially where limitations were considered on the bargaining side. The NZCTU was not able to provide feedback on a limit in the timeframes required for this briefing.

39. We have considered and dismissed the possibility of placing a limit on the bargaining side. A limit on the number of entities that could form the bargaining side would infringe on freedom of association and would likely require an assessment to ensure that the most representative people are able to form the bargaining side.

Placing a 10-person limit on the number of bargaining representatives at the bargaining table is an arbitrary limit, without significant improvements in workability

40. Placing a limit on the number of participants at the bargaining table may improve workability of the bargaining process by minimising the risk that there are too many voices around the table. However, the system already provides ways for the bargaining sides to manage the

number of bargaining representatives around the table by providing that each bargaining side must appoint a lead advocate to act as the primary spokesperson.

41. BusinessNZ raised concerns that a limit could generate protracted debates about participation before the bargaining side is able to discuss substantive issues. To exclude participants from the process arbitrarily (due to the limit) could also risk allegations of bad faith.

42. Setting a 10-person limit could also risk the first employer associations getting a first-mover advantage. If employer associations apply to join the bargaining side later the 10 representatives are likely to be already set. If a 10-person limit were to be explored, there would need to be a requirement on the bargaining side to reconsider which representatives should be at the bargaining table whenever a new entity is added to the bargaining side. This could, for example, occur when bargaining is required to be consolidated.

43. We do not think any improvements in the workability of bargaining would be worth the risks that the limit imposes, both in terms of gaming, possible disputes around whether those selected were done so in a manner that complies with the bargaining sides bargaining obligations and the arbitrary nature of setting a 10-person limit (which could mean being overly exclusive unnecessarily).

We recommend no limitations on the number of people that can be at the bargaining table from either bargaining side

44. On balance, we do not consider any limits to be necessary or desirable. The bargaining parties are best suited to manage the number of people they wish to represent them around the bargaining table. Having a lead advocate will help to ensure that the discussions are primarily had through two main representatives at the bargaining table. A bargaining support person may also be able to assist parties to bargain and to facilitate the discussion.

45. We have previously advised that, as there is currently a lack of infrastructure for sector-wide bargaining in New Zealand, requiring a 'most representative' bargaining representative would be difficult to implement in practice. If there were a number of potential representatives the process for appointing a single representative could add complexity to the system and lead to disputes.

46. We recommend that any union or industry body that meets the requirements for being a bargaining party and has affected members should be able to join the worker or employer bargaining side. If there is more than one organisation willing and able (ie they meet the requirements) to be a bargaining party, it would be up to those organisations to determine how they work together during bargaining. If there is disagreement about how the bargaining parties on one side work together they could access the dispute resolution system.

Verifying that the representation requirements are met and communicating who the bargaining side is

47. We recommend that there is a verification process to check that the entities proposed to be the bargaining side meet the representation criteria. We propose that MBIE check whether the representatives for both bargaining sides have met the requirements to be a part of the bargaining side. We anticipate that this would require:

    - For unions, that the union has an employee in proposed coverage, is a registered union and the union has an objective in its society's constitution that is broad enough to allow it to represent non-members for the purposes of FPA bargaining.

- For employer associations, that the employer association has at least one member that is an employer with an employee in proposed coverage and meets the remaining criteria listed in paragraph 23 above.

48. It is important that MBIE checks that both unions and employers meet these requirements so that bargaining cannot be invalidated and so that MBIE has a contact point so that it can undertake its other functions (i.e. informing parties of any potential overlapping bargaining or where another FPA is initiated for the same Industry).

49. If a further employer association or union wish to join the bargaining side after the bargaining side is set they would be able to, however, they would need to get verified by MBIE first that they meet the proposed criteria.

Timeframe for verifying representation

50. Knowing when the bargaining side is set is important for providing a starting point for when the bargaining obligations (including good faith obligations) that are placed on the bargaining side commence.

51. You have previously agreed that the employer bargaining side must identify representatives within 60 working days (approximately three months) of the FPA being initiated (briefing 2021-1897 refers). If the employer bargaining side has not formed within this timeframe BusinessNZ would be the default employer representative.

52. You have also agreed that each bargaining side would be required to develop an agreement about their approach to bargaining within 20 working days of representatives being set, including how they will progress, and make decisions for FPA bargaining. Currently there is no trigger for when the 20 working days should start from for either the union or employer bargaining sides.

53. We recommend that each bargaining side be required to notify MBIE when their bargaining side has been established within three months of initiation and provide the information that demonstrates each entity on the bargaining side meets the criteria to be a bargaining party.

54. It is recommended that MBIE checks that the initiating union meets the requirements as part of the initiation process. If the union bargaining side is not changed within three months, the initiating union would be the bargaining side for all employees within coverage. Once MBIE is satisfied that the criteria have been met, the 20 working days to agree a bargaining side agreement would then commence.

There may be substantial changes to the bargaining side that may warrant forming a new bargaining side agreement

55. For the first six months after an FPA is initiated, any subsequent initiation for a different occupation in the same Industry FPA will be required to consolidate. After the six month period, the existing bargaining parties may agree to consolidate bargaining (but it is not a requirement). We recommend that where consolidation is taking place, that a revised bargaining side agreement should be able to be requested within one month of the two bargaining sides being consolidated. This is because coverage would have been broadened to include new occupations, impacting new employers and unions.

56. We recommend that if the new bargaining side requests a revised bargaining side agreement then the existing bargaining side must, within 20 working days from the request, agree to a revised bargaining side agreement or agree that the existing bargaining agreement stands. Existing bargaining (that is subject of the first FPA) would be able to continue while the new bargaining side is verified and is merged with the existing bargaining side.

57. We consider that this balances the ability for the new bargaining parties to determine how decisions are made about the FPA bargaining process with the need to ensure that bargaining can progress quickly once the two bargaining sides are consolidated.

Where a new bargaining party joins the existing bargaining side we do not consider that the bargaining side agreement needs to be revised

58. Where there is only one FPA and other bargaining parties join the bargaining side after the bargaining side agreement has been set, we recommend that there should not be a requirement to revise the bargaining side agreement, rather the bargaining side should consider whether to amend the agreement to reflect the new construct of the bargaining side.

59. In this situation, bargaining parties have had an opportunity to join at the outset of bargaining, but were delayed in becoming a bargaining party. This is different from consolidation where a new occupation has been initiated for with new unions and employers who may not have had the opportunity to join the initial FPA bargaining side (as they were only impacted when the second FPA was initiated).

60. We consider that this recommendation should encourage bargaining parties to join the bargaining side early in the process to have a say in the bargaining side agreement.

Next steps

61. We will be providing you the remaining advice on the FPA system imminently and we will continue to work on drafting instructions for the Bill.