

Designing a Fair Pay Agreements System Consultation Summary

October 2019



The Government is consulting on the detailed design of Fair Pay Agreements, a mechanism for collective bargaining to set binding minimum wages and terms across an occupation or sector where it's needed.

Many working New Zealanders are not receiving their fair share. For a number of decades we have experienced increasing levels of inequality and poverty.

Over that time, vulnerable workers have had less access to collective bargaining and wages haven't kept up with productivity increases. The wealthiest have seen their salaries increase at twice the rate of middle-income earners.

Fair Pay Agreements are one part of the Government's plan to address this. They would be designed for occupations and sectors that need extra help to lift wages and conditions.

We think workers and employers know their sector best. We're consulting on a system that would allow them to work together to set standards that are relevant to their sector, support growth and are fair for workers. This could encourage competition that is based not on low wages, but on better products and services, and investments in skills, training and equipment.

Through Fair Pay Agreements, we want to:

- › create a level playing field where good employers are not disadvantaged by providing reasonable wages and conditions.
- › support New Zealanders to build a highly-skilled and innovative economy that provides well-paid, decent jobs, and fairly shares the gains from economic growth and productivity.

Many countries have similar systems to establish minimum employment standards across a sector or occupation, including in Australia, Europe and Singapore.

The OECD evidence shows that when implemented well, sector-wide collective bargaining is associated with higher employment, less wage inequality, better productivity outcomes and higher wages for covered workers.

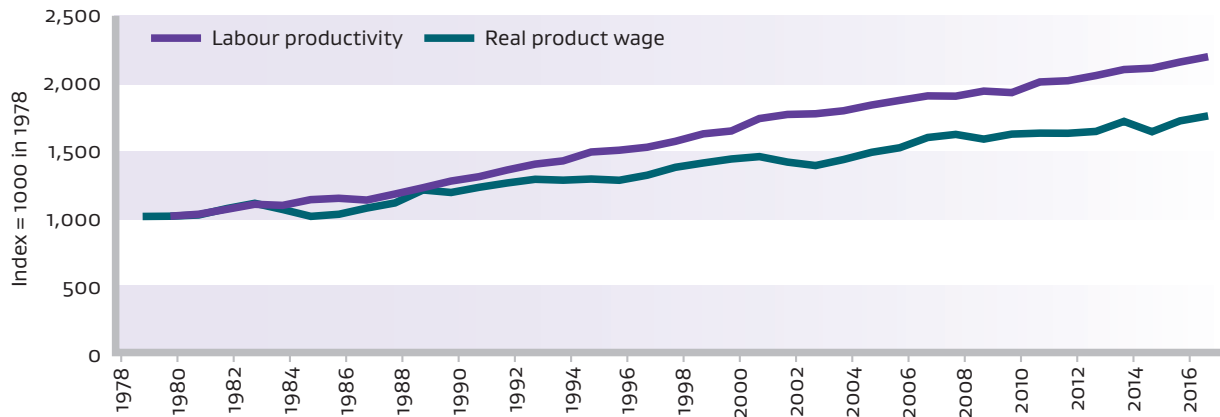
The Government is taking the time to get this system right. This consultation builds on the recommendations of a working group of employer, worker, community and academic representatives. Now we are seeking wider input from you to ensure we develop an accessible and workable system that offers benefits for all parties involved.

Our consultation on these proposals is open until 27 November 2019. For full details on how to have your say, visit www.mbie.govt.nz/fairpayagreements.

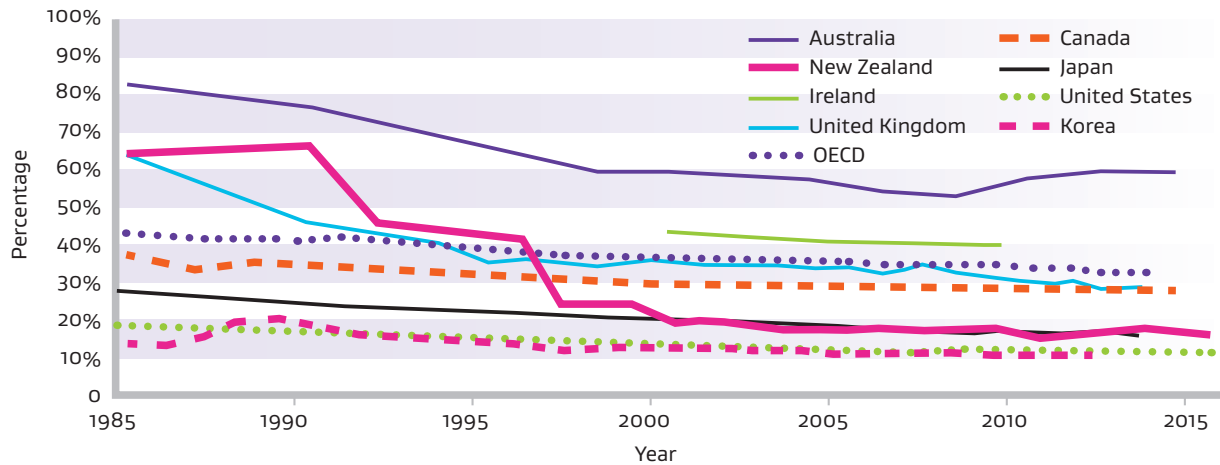
Iain Lees-Galloway

Minister for Workplace Relations and Safety

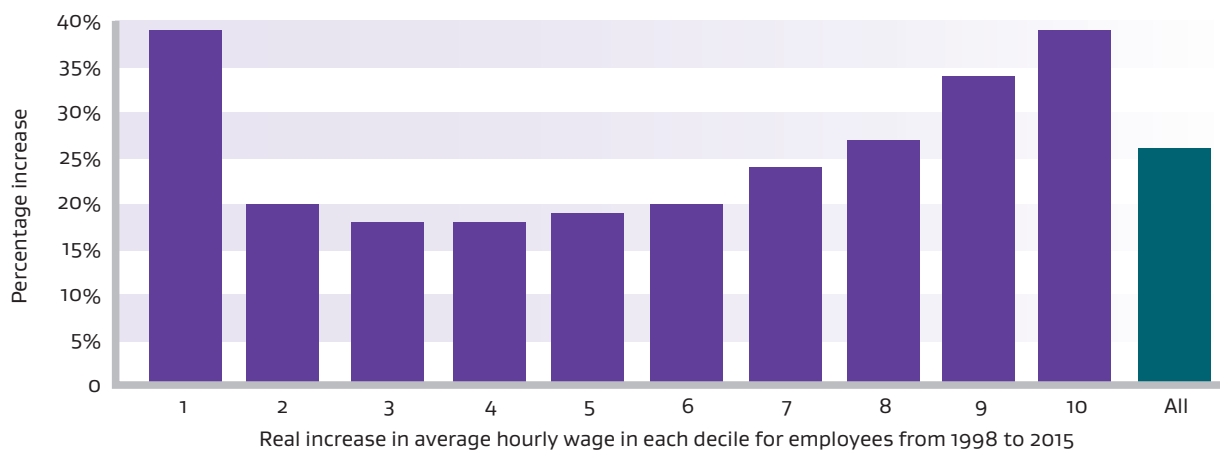
Wages have been growing more slowly than productivity



The amount of workers represented in collective bargaining has declined significantly



Wage growth has been unequal, with low and middle-income workers not receiving their fair share



What we're consulting on

A Fair Pay Agreement would be a set of occupation and sector-specific minimum employment standards, such as wages, redundancy, or overtime. These would be agreed through bargaining between affected workers and employers, and would then become legal requirements in that sector.

INITIATION

We want more feedback on how Fair Pay Agreements could be initiated, including who can do it, how much support it needs and the role of any public interest test.

- › **INITIATING PARTIES:** Workers would be able to initiate FPA bargaining. We're asking whether employers should be able to do so too, and how to treat different employer types (like franchises or labour hire companies).
- › **REPRESENTATION TEST:** Workers and businesses could initiate bargaining by demonstrating sufficient support. We're consulting on whether a 10% threshold is appropriate, whether there should also be a numerical threshold (i.e. a set number of workers) and what this could be, and how this support can be measured.
- › **PUBLIC INTEREST:** FPA bargaining could be initiated by meeting a public interest test. We have some ideas for the criteria this test could include. We're also consulting on whether a public interest test should be required on top of a representation test, or a standalone way to commence FPA bargaining.
- › **NOTIFICATION:** It's important that affected workers and businesses know that FPA bargaining is being initiated. We want your views on who should be responsible for spreading the word.

COVERAGE

We're looking at how to define who is covered by a Fair Pay Agreement, and what scope there is for options to help vulnerable businesses or cater to regional labour market differences.

- › **DEFINING COVERAGE:** We're consulting on whether initiating parties decide who they want covered and restricting coverage to specified occupations within a sector, using officially-recognised classifications (ANZSCO and ANZSIC). Multiple occupations or sectors could be included.
- › **RENEGOTIATING COVERAGE:** Parties may be able to agree to change who is covered during bargaining. We want to know if there should be restrictions on doing so, and whether initiation tests will need to be re-run if coverage significantly changes.
- › **EXEMPTIONS:** Time-limited exemptions may allow some businesses (like new entrants or small and medium-sized enterprises) to better adapt to an FPA. We want feedback on what circumstances they may be warranted in and what restrictions should be placed on any exemptions.
- › **REGIONAL DIFFERENCES:** We want further feedback on how FPAs could reflect regional labour markets, including through bargaining representatives, regional variations or a test that assesses regional impacts. We are also consulting on whether there could be separate regional FPAs.
- › **CONTRACTORS:** The Government is considering options for strengthening protections for dependent contractors under a separate project, including whether to extend an FPA system to contractors.

BARGAINING

We want an efficient and effective process, so we have put forward options designed to help bargaining parties get a fair and representative outcome.

- › **SCOPE:** There are a wide range of terms and conditions an FPA could include. We're consulting on what topics should be mandatory, and whether any should be prohibited. We're also asking whether to offer more or less flexibility to bargaining parties on voluntary topics.
- › **REPRESENTATION:** Unions and employer groups are the usual representatives for bargaining. We're asking whether there could be representatives for non-unionised workers or other interests.
- › **COSTS:** There will be costs involved with bargaining and we want views on the best way to share this fairly, including the possibility of a bargaining levy, government support, or a 'costs where they fall' approach.
- › **ACTIVE SUPPORT:** Bargaining parties will likely need more support in FPA bargaining, compared to current enterprise-level negotiations. We're looking at a 'navigator' service where a person would actively help parties and want your views on this.
- › **GOOD FAITH:** Parties are required to work with each other in good faith under current employment law. We're consulting on whether this should also be the case for FPAs and if additional responsibilities might be needed under an FPA system.
- › **COMMUNICATION:** Bargaining representatives will need to communicate with those they represent. We want your views on when and how this should happen.

DISPUTE RESOLUTION

It will be essential for there to be a system in place for dealing with situations where the bargaining parties cannot resolve an ongoing disagreement.

- › **DISPUTE RESOLUTION PROVIDERS:** Under current employment law, parties can use mediation services, the Employment Relations Authority and the courts. We're asking whether these services make sense for FPAs, and how they might work with a 'navigator' service designed to actively support bargaining.
- › **RESOLVING A STALEMATE:** If parties can't reach an agreement, a public body may be required to determine the terms and conditions. Industrial action would not be permitted under FPAs, so there would need to be sufficient incentives to reach an agreement. We are seeking views on how this process could be managed and what appeal rights there could be.

ANTI-COMPETITIVE BEHAVIOUR

We want FPAs to provide good outcomes for employers, workers and consumers. We're looking at ways to minimise the potential negative consequences they may present, such as anti-competitive behaviour.

- › **A MARKET IMPACT TEST:** We're considering options on having an independent government body analyse an FPA for potentially significant negative impacts. We want feedback on this option or what other safeguards may be useful for preventing negative impacts, such as anti-competitive behaviour.

CONCLUDING AN FPA

We want more feedback on how to move from a bargained agreement to an enforceable set of minimum terms and conditions for workers and employers.

- › **RATIFICATION:** We're considering options for how an FPA comes into force through ratification (i.e. it would need more than 50% support from voters on the worker and employer sides). We want a fair and accountable process, so we're seeking feedback on this threshold and procedure.
- › **ENACTMENT:** A ratified or determined FPA would need a legal mechanism to come into force. We're considering putting FPAs into regulations, and consulting on whether the government should be allowed to change the terms when enacting it, to address loopholes, unclear language or inconsistency with other laws.
- › **ENFORCEMENT:** FPAs would set minimum terms and conditions for affected workers, so there would need to be a mechanism if workers aren't receiving their entitlements. We're asking how these could be enforced and what role the Labour Inspectorate could play.
- › **COST RECOVERY:** There will be costs involved in administering FPAs, such as administering any initiation or market impact tests. We're asking whether and to what extent parties who benefit from an FPA should contribute to these costs.

The Government wants your feedback

The Ministry of Business, Innovation and Employment is collecting written submissions to gather a range of views on how Fair Pay Agreements might work in practice and how they could impact different groups. We encourage anyone with an interest to send in a written submission.

The consultation period closes at **5:00 pm, 27 November 2019**.

Please download the consultation document and submission form at www.mbie.govt.nz/fairpayagreements.

For more information, please email fairpayagreements@mbie.govt.nz **or write to:**

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