



## COVERSHEET

<b>Minister</b>	Hon Iain Lees-Galloway	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	<b>Fair Pay Agreements: public consultation</b>	<b>Date to be published</b>	Before 11 November 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
25/09/2019	<i>Fair Pay Agreements: public consultation</i>	<i>Office of Hon Iain Lees-Galloway</i>
25/09/2019	<i>DEV-19-MIN-0266</i>	<i>Cabinet Economic Development Committee</i>

### Information redacted

**YES**

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Some information has been withheld for the reasons of confidentiality and confidential advice to the Government.



# Cabinet Economic Development Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Fair Pay Agreements: Release of Discussion Paper

**Portfolio**                      **Workplace Relations and Safety**

On 25 September 2019, the Cabinet Economic Development Committee (DEV):

#### Background

1        **noted** that on 23 May 2018, DEV agreed in principle to the introduction of a Fair Pay Agreements (FPA) system, subject to advice from the FPA Working Group on the scope and design of the system and the Minister for Workplace Relations and Safety reporting back to Cabinet on the government's response [DEV-18-MIN-0100];

#### FPA Working Group's recommendations

- 2        **noted** that the FPA Working Group submitted its recommendations to the government, and the Working Group's report was released in January 2019;
- 3        **noted** that the Working Group's report presents a case for the introduction of sector or occupation-wide bargaining to set minimum terms in some circumstances, and sets out a proposed model and associated policy settings that could be implemented through legislative change;
- 4        **noted** that the system recommended by the Working Group includes the following key policy features:
- 4.1        workers could initiate FPA negotiations if they met a threshold of 10 percent or 1,000 workers (whichever is lower) in the nominated sector or occupation, or a public interest test was met (i.e. harmful labour market conditions are evidenced which warrant an FPA);
  - 4.2        the occupation or sector to be covered by an FPA would be defined and negotiated by the parties, but it should include all workers in that occupation or sector (not just employees);
  - 4.3        once agreed, FPAs would bind all employers and workers in the relevant sector or occupation to the minimum standard. In some circumstances, it may be appropriate for time-limited exemptions from FPA agreements to apply;
  - 4.4        if parties could not agree during negotiations, they should enter dispute resolution. Where mediation is not successful, the parties should seek a binding determination from a body such as the Employment Relations Authority or Employment Court;

- 5 **noted** that the employer representatives on the Working Group disagreed that the system should be compulsory for employers;
- 6 **noted** that the Minister for Workplace Relations and Safety agrees with the Working Group's view that contractors should be included in the system, and has asked the Ministry of Business, Innovation and Employment to consider options for strengthening protections for dependent contractors, including the potential for collective bargaining and links into FPAs, as a separate policy project;

### Release of discussion paper

- 7 **agreed** to the release of the discussion paper *Designing a Fair Pay Agreements System* (the discussion paper), attached to the submission under DEV-19-SUB-0266, subject to any minor or editorial changes that may be required;
- 8 **agreed** to consult on a proposed FPA model broadly consistent with the Working Group's model, which includes the following elements:
- 8.1 FPAs will only set minimum terms for the affected group. Collective bargaining or negotiation for an individual employment agreement would still occur above the floor set by the FPA;
  - 8.2 the design of the FPA system would initially not include contractors, but a parallel piece of work is considering the extension of the FPA system to contractors;
  - 8.3 if the public interest test is applied, it could require the initiating party to demonstrate a problematic outcome for workers in the sector, and the potential that more sectoral coordination could be beneficial;
  - 8.4 coverage for FPAs should be defined by the initiating parties, and expressed as clearly-defined occupations within sectors. The bargaining parties could then negotiate the boundaries of coverage as needed, but any significant change would need to be reassessed against the initiation thresholds;
  - 8.5 parties may agree to allow temporary exemptions from coverage;
  - 8.6 parties may include regional differences in the terms of the FPA. The discussion paper asks whether regional FPAs should be allowed;
  - 8.7 the primary bargaining representatives should be unions and employer organisations;
  - 8.8 there should be two categories of topics for FPAs: mandatory and excluded. Any topic not excluded would be allowed. The discussion paper also asks whether, alternatively, mandatory and permissible categories of topics should be set;
  - 8.9 the mandatory topics could include pay rates and how they will be adjusted over the term of the FPA, whether superannuation employer contributions are included in the base wage, overtime and penal rates, skills and training, ordinary hours/days of work, and redundancy and leave requirements;
  - 8.10 a navigator will be assigned to each FPA process to assist the parties, advise on the process, and help parties to discuss the range of possible provisions of the agreement;
  - 8.11 bargaining parties should be required to deal with one another (and employment institutions) in good faith throughout the process;

- 8.12 the dispute resolution system for FPAs should leverage off the existing system as much as possible. Appeal rights should be limited to matters of law only;
- 8.13 ratification of a finalised FPA should require the support of 50 percent +1 of each side;
- 8.14 in the event of a bargaining stalemate, the Employment Relations Authority should have the power to make a determination on the mandatory terms of FPAs. The discussion paper also asks an open question about the Authority's role in relation to permissible terms;
- 8.15 there will be some cost recovery in the system;

9 **agreed** to consult on possible alternatives for FPA processes:

- 9.1 whether the threshold for initiation of bargaining for an FPA should be 10 percent of affected employees (as recommended by the Working Group), or some other ratio;
- 9.2 whether there should be an absolute representation threshold (e.g. 1,000 workers);
- 9.3 whether initiating parties should be also required to meet the public interest test in all cases;
- 9.4 whether sector coverage of FPAs should be set in advance by way of a specified list of sectors where a public interest case for intervention has been made;
- 9.5 whether initiation of FPAs by employer parties should be permissible;
- 9.6 whether other bargaining parties should be allowed at the table alongside unions and employers and, if so, under what circumstances;
- 9.7 whether once an FPA has been finalised, it should be subject to a market impact test by a government body to ensure that any benefits are weighed against possible significant negative consequences on the sector, or the wider economy (including competition). The market impact test may result in the government body referring the FPA back to the parties or determining body to renegotiate or reconsider, or in extreme circumstances, rejecting the FPA if it believes the market impact is fundamental and could not be mitigated;

**Financial implications**

10

[REDACTED]

[REDACTED] Confidential advice to Government [REDACTED]

[REDACTED]

11 **noted** that in addition to the above costs of operating the system, there will be costs for bargaining parties unfunded by the government, including costs for the government as an employer;

12 **noted** that the Minister for Workplace Relations and Safety intends to submit a budget bid for funding the system once final decisions have been made;

## Risks and mitigation

- 13 **noted** that the introduction of the FPA system carries some risks, including:
- 13.1 the ban on industrial action and the compulsory arbitration in the FPA system is inconsistent with New Zealand's International Labour Organisation obligations;
  - 13.2 the system will set minimum standards for the occupations/sectors which have FPAs, locking-in business models and making it more difficult for new players to undercut other businesses with lower wages or conditions. Some employers may struggle to meet the terms of FPAs;
  - 13.3 the balance of incentives on parties could be such that no or few FPAs are concluded, or do not deliver the desired outcomes, potentially exacerbating existing concerns with the labour market;
  - 13.4 the decision to initially exclude contractors from the FPA system could exacerbate existing incentives to misclassify workers as contractors;
  - 13.5 the application of FPAs to all employees in a sector or occupation may disincentivise union membership, which could in turn weaken firm-level collective bargaining;
- 14 **noted** that possible elements of the consultation model could also mitigate many of the risks of the system:
- 14.1 a possible combination of the public interest and representativeness thresholds: this combination ensures that the FPA system is focussed on occupations/sectors where there is a labour market problem and where sectoral coordination will be beneficial;
  - 14.2 a possible market impact test: this will ensure that the final FPA will not have a significant negative impact on the sector itself or the wider economy (e.g. competition risks);
  - 14.3 government putting the agreements into regulation: this reduces the risk of an inappropriate delegation of law making powers, by retaining for the government the ultimate responsibility for making the FPA binding;

## Next steps

- 15 **invited** the Minister for Workplace Relations and Safety to seek Cabinet decisions on the proposed FPA model in 2020, including approval to draft legislation;
- 16 **noted** that the Minister for Workplace Relations and Safety will report back on the results of consultation process at the same time as seeking approval to draft legislation.

Janine Harvey  
Committee Secretary

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**Hard-copy distribution: (see over)**

**Present:**

Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Phil Twyford  
Hon Dr Megan Woods  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Shane Jones  
Hon Kris Faafoi  
Hon Willie Jackson

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister for Workplace Relations and Safety

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