


Cabinet Economic Development Committee paper, Fair Pay Agreements: Approval to draft
Date: 13 April 2021 **Security Level:** BUDGET-SENSITIVE

Minister: Hon Chris Hipkins, Minister for the Public Service

Report No: 2021/0089

Purpose To provide you with advice on the paper, Fair Pay Agreements: Approval to draft, which will be considered by Cabinet's Economic Development Committee (DEV) on 14 April 2021, and as attached.

Date of meeting 14 April 2021

Minister Hon Michael Wood, Minister for Workplace Relation and Safety

Proposal The Cabinet paper seeks agreement to the key features of the Fair Pay Agreement (FPA) system, which would enable employees and employers in an industry or occupation to bargain new minimum standards. The paper also seeks approval to begin drafting legislation to give effect to the FPA system.

Background We last advised you on this Cabinet paper on 1 April 2021 [Te Kawa Mataaho Report 2021/0081]. At that point, the Cabinet paper had been circulated for ministerial consultation and our advice outlined our outstanding concerns with the paper and invited you to provide feedback to Minister Wood if you agreed.

Since our last advice to you, we have continued to engage with the Ministry of Business, Innovation and Employment on the paper. Our feedback on the role of the Public Service Commissioner (the Commissioner) in FPA bargaining in the Public Service and Education Service has been incorporated.

The paper includes a Te Kawa Mataaho Public Service Commission comment (please see paragraphs 179-180) which outlines our key concerns that have not been incorporated into the paper because they are inconsistent with decisions already taken by Minister Wood. Our key concerns are outlined below.

Key issues **The proposed design may not improve outcomes for the most vulnerable workers**

The proposed FPA system seeks to address poor labour market outcomes for employees (e.g., low pay and employment vulnerability) resulting from a "race to the bottom" and low bargaining power. However, some design aspects of the proposed FPA system are not well targeted to low-paid or vulnerable workforces, and so the FPA system may not improve labour market outcomes for these employees.

The proposed system objective is broad and does not target vulnerable occupations or industries: "to improve labour market outcomes by enabling employers and employees to collectively bargain industry- or occupation-wide minimum employment terms".

The proposal to require initiators to meet either the representation test or public interest test does not sufficiently target occupations or industries where competition is based on decreasing labour costs. The representation test requires at least 10% of the covered workforce or 1,000 employees in coverage to support initiation. The public interest test requires evidence that an industry or occupation faces certain labour market issues such as low pay or low bargaining power. The representation test appears more likely to be used by initiating unions rather than the more qualitative public interest test.

These design features may result in FPAs for already privileged and secure workforces.

We recommend targeting the design of the FPA system towards addressing the labour market problems identified in the paper. This could be achieved by:

- Targeting the FPA system objective towards low paid and vulnerable workforces, and
- Requiring initiating unions to meet both the representation and public interest tests.

FPAs may result that are inconsistent with government expectations on employment relations in the public sector

The proposed FPA system may see public sector employers bound into FPAs where the majority of employers are private sector companies. In these cases, there is no certainty that FPAs will adhere to government fiscal or other parameters, even with the proposed role of the Commissioner. FPAs that are inconsistent with government expectations on employment relations in the public sector may also undermine current efforts to improve the consistency of terms and conditions of employment to support a unified Public Service.

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