

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #1

<b>Date</b>	5 July 2018, 1 pm – 4pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	None	
<b>Secretariat (MBIE)</b>	Paul Stocks Katherine MacNeill	Ruth Isaac Sam Thornton

#### 1. Introductions

#### 2. Housekeeping

- a. Agreed to make decisions by consensus.

#### 3. Terms of Reference

- a. Confirmed Terms of Reference.
- b. Agreed that any expiration of FPAs to be considered as part of 7.9 of Terms of Reference.
- c. Agreed the proposed model would need to be workable for the future of work.

#### 4. Work programme:

- a. Agreed to the draft work programme, covering broad themes for work programme on (i) diagnosis, (ii) design and (iii) productivity.
- b. Diagnosis workstream
  - Noted issues with existing collective bargaining system: low collective coverage, tender process drives wage cost cutting, high transaction costs for collective bargaining with small employers.
  - Discuss need to analyse what the problem we're trying to solve is and what is the evidence, eg monopsony power; or one player undercutting an otherwise competitive market.
  - ACTION: Kirk Hope and Richard Wagstaff to provide examples of industries where collective bargaining is working well and why.
  - ACTION: Secretariat to summarise and circulate the following reports:
    - OECD 2018 Employment Outlook
    - NZCTU report by Bill Rosenberg ([Shrinking portions to low and middle-income earners: Inequality in Wages & Self-Employment 1998-2015](#)).
    - Productivity Commission report: "[Can the Kiwi Fly? Achieving Productivity Lift in New Zealand](#)".
  - ACTION: Secretariat to provide information on the current landscape of collective bargaining in New Zealand.

- ACTION: Secretariat to provide gender and ethnic breakdown of minimum wage employees.

**c. Design workstream**

- i. Noted the need to consider the interface between FPAs and pay equity settlements.
- ii. Noted the need to consider whether FPAs could be regional.
- iii. ACTION: Secretariat to provide information on collective bargaining mechanisms are used in other countries, including summary of evaluations and the 'direction of travel'.
- iv. ACTION: Secretariat to provide options or examples of how to define occupations/industries and present to working group at future meeting. E.g. immigration definitions, ANZSCO, international examples (e.g. Australia's modern awards).
- v. ACTION: Richard Wagstaff and Kirk Hope agreed to provide thoughts on ways to deal with capacity and funding issues for workers and employers wanting to participate in bargaining.

**d. Productivity workstream**

- i. ACTION: Secretariat to invite Productivity Commission to write to the Panel and present on key productivity challenges and opportunities for New Zealand.

**SUMMARY OF ACTION POINTS**

Action	Responsible person	Due date
1. Kirk Hope and Richard Wagstaff to provide examples of industries where collective bargaining is working well and why.	Kirk and Richard	When available
2. Secretariat to summarise and circulate the following reports: <ul style="list-style-type: none"> <li>○ OECD 2018 Employment Outlook</li> <li>○ NZCTU report by Bill Rosenberg (<a href="#">Shrinking portions to low and middle-income earners: Inequality in Wages &amp; Self-Employment 1998-2015</a>).</li> <li>○ Productivity Commission report: "<a href="#">Can the Kiwi Fly? Achieving Productivity Lift in New Zealand</a>".</li> </ul>	Secretariat	1 August 2018
3. Secretariat to provide information on the current landscape of collective bargaining in New Zealand.	Secretariat	To be presented to Panel at 20 July 2018 meeting.
4. Secretariat to provide gender and ethnic breakdown of minimum wage employees.	Secretariat	To be presented to the Panel at 20 July 2018 meeting.
5. Secretariat to provide information on collective bargaining mechanisms are used in other countries, including summary of evaluations and the 'direction of travel'.	Secretariat	To be presented to the Panel at 20 July 2018 meeting.
6. Secretariat to provide options or examples of how to define occupations/industries and present to working	Secretariat	To be provided to the Panel for a

---

group at future meeting. E.g. immigration definitions, ANZSCO, international examples (e.g. Australia's modern awards).

---

future meeting.

7. Richard Wagstaff and Kirk Hope agreed to provide thoughts on ways to deal with capacity and funding issues for workers and employers wanting to participate in bargaining.

Kirk and Richard

When available.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT  
DRAFT

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #2

<b>Date</b>	20 July 2018, 1pm – 4pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Richard Wagstaff
<b>Apologies</b>	Dr Isabelle Sin	
<b>Secretariat (MBIE)</b>	Paul Stocks Katherine MacNeill Gayathiri Ganeshan	Sam Thornton Beth Goodwin Alexandra Jackson

#### 1. Introductions

#### 2. Minutes from previous meeting

- a. Agreed to add a further example to third bullet under 4b, as underlined: “Discuss need to analyse what the problem we’re trying to solve is and what is the evidence, eg monopsony power; or one player undercutting an otherwise competitive market.”
- b. Update on previous actions:
  - Action 1: Kirk Hope and Richard Wagstaff clarified they will provide their examples of industries where collective bargaining is working well in written form, and will also include examples of where it is not working well.
  - Action 7: Richard Wagstaff indicated they were likely to recommend state support to deal with capacity and funding issues, as low union membership is likely to be a common feature in FPA bargaining.
- c. ACTION: Invite Productivity Commission to attend a future meeting.

#### 3. Current labour market outcomes

- a. Discussed labour market outcomes for firms and workers at an aggregate and more detailed level.
- b. ACTION: Consider setting up joint meeting with the Tax Working Group.
- c. ACTION: Secretariat to provide updated information on sectoral trends later in panel’s process.

#### 4. Collective bargaining landscape in New Zealand

- a. Discussed current status of collective bargaining in New Zealand.

- b. ACTION: John Ryall to provide written description of experience of MECAs.
- c. ACTION: Stephen Blumenfeld to provide more information on extension of CEAs.
- d. ACTION: Secretariat to find out about assumptions in ASB predictions of FPAs' economic impact.
- e. ACTION: Secretariat to provide information on Film Industry Working Group's recommendations once completed.

#### 5. International comparisons

- a. Discussed other countries' systems of sector-level bargaining.
- b. ACTION: Richard Wagstaff to share any available information about Modern Awards from his organisation's visit to Australia.
- c. ACTION: Secretariat to provide further information about international comparisons (eg Singapore, South Africa, Denmark, Sweden).
- d. Noted questions for primary design are broadly appropriate.

#### SUMMARY OF ACTION POINTS

	Action	Responsible person	Due date
8.	Invite Productivity Commission to attend a future meeting.	Secretariat	16 Aug 2018
9.	Consider setting up joint meeting with the Tax Working Group.	Secretariat	16 Aug 2018
10.	Secretariat to provide updated information on sectoral trends later in panel's process.	Secretariat	When available
11.	John to provide written description of experience of MECAs.	John	16 Aug 2018
12.	Stephen to provide more information on extension of CEAs.	Stephen	When available
13.	Secretariat to find out about assumptions in ASB predictions of FPAs' economic impact.	Secretariat	When available
14.	Secretariat to provide information on Film Industry Working Group's recommendations once completed.	Secretariat	When available
15.	Richard to share any available information about Modern Awards from his organisation's visit to Australia.	Richard	When available
16.	Secretariat to provide further information about international comparisons (eg Singapore, South Africa, Denmark, Sweden).	Secretariat	When available/ on ongoing basis

## PREVIOUS ACTION POINTS

Action	Responsible person	Due date	Update
1. Kirk Hope and Richard Wagstaff to provide examples of industries where collective bargaining is working well and why.	Kirk and Richard	When available	To be provided before meeting 5, 31 Aug 2018
2. Secretariat to summarise and circulate the following reports: <ul style="list-style-type: none"> <li>o OECD 2018 Employment Outlook</li> <li>o NZCTU report by Bill Rosenberg (<a href="#">Shrinking portions to low and middle-income earners: Inequality in Wages &amp; Self-Employment 1998-2015</a>).</li> <li>o Productivity Commission report: "<a href="#">Can the Kiwi Fly? Achieving Productivity Lift in New Zealand</a>".</li> </ul>	Secretariat	1 Aug 2018	
3. Secretariat to provide information on the current landscape of collective bargaining in New Zealand.	Secretariat	Meeting 2	Closed.
4. Secretariat to provide gender and ethnic breakdown of minimum wage employees.	Secretariat	Meeting 2	Closed.
5. Secretariat to provide information on collective bargaining mechanisms are used in other countries, including summary of evaluations and the 'direction of travel'.	Secretariat	Meeting 2	Closed.
6. Secretariat to provide options or examples of how to define occupations/industries and present to working group at future meeting. E.g. immigration definitions, ANZSCO, international examples (e.g. Australia's modern awards).	Secretariat	To be provided to the Panel for a future meeting.	
7. Richard Wagstaff and Kirk Hope agreed to provide thoughts on ways to deal with capacity and funding issues for workers and employers wanting to participate in bargaining.	Kirk and Richard	When available	To be provided before meeting 5, 31 Aug 2018

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #3

<b>Date</b>	31 July 2018, 1pm – 4pm	
<b>Venue</b>	Room Te Aro 4, Terrace Conference Centre	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Richard Wagstaff
<b>Apologies</b>	Dr Isabelle Sin, Paul Stocks (MBIE)	
<b>Secretariat (MBIE)</b>	Ruth Isaac Gayathiri Ganeshan Katherine MacNeill	Beth Goodwin Alexandra Jackson Rebecca Scoular-Sutton

#### 1. Welcome

#### 2. Invoicing and expense recording

- a. Agreed to declare preparation and participation for each meeting to be a day in total for each member.

#### 3. Minutes from previous meeting

- b. Agreed to adjust the previous minutes at 4b: to remove examples.
- c. Agreed that Secretariat should provide more detailed minutes in the future, summarising the discussions held.

#### 4. Potential objectives of FPA system –

- a. Presentation by Beth Goodwin to set up discussion. Recapped the key points from last meeting about New Zealand's labour market. Panel discussed an additional point to consider about the impact of transfers/abatements and how this will link in with the Tax and Welfare Working Groups.
- b. Noted that the OECD 2018 Employment Outlook provides some good perspectives. The secretariat will summarise this report and send out to the group (as per outstanding action point). Noted it would be helpful to assess the countries in the 2018 Employment Outlook that don't have a statutory minimum wage.
- c. Discussed productivity considerations. Noted that it is important to consider Māori and Pasifika perspectives.
- d. Noted that one role of FPAs could be to reduce reliance on the minimum wage. An important question is whether there would be different rates within an industry for different regions across the country.

- e. Discussed collective bargaining in New Zealand – difficulties due to small enterprises, workers geographically spread, high turnover, people who don't know their employment rights. Complex context.
- f. Noted that there would need to be a separate piece of work considering independent contractors, but that the Panel will need to decide how to define which workers are included in an FPA. Risks of arbitrage.
- g. Discussed monopsony risks where government is the employer, or the source of funding for a sector. Discussed Terra Nova settlement. Noted that it comes back to bargaining strength of the group. Significant differences in capacity to pay workers between private sector employers, and employers funded by government.
- h. Discussed the current individualised nature of employment relationships as a fundamental assumption of the Employment Relations Act. Discussion of the importance of coordination for a FPA system to work.
- i. Suggestion made that it will be important for parties to see benefits of being less individualised – for example, benefits of collectivism for employers could be to raise business competence, health and safety, increasing productivity, increasing education. Opportunity for employers and workers to design together the skills needed in their industry.
- j. Noted that FPAs are similar to MECAs in the ability to reduce transaction costs. FPAs will still face significant challenges in design. Other issues in New Zealand's labour market and other policy settings will affect their success.
- k. Discussed an example of hospitality and the various costs affecting businesses in the sector. Noted that the effects of other changes should be considered alongside Government changes e.g. local government changes.
- l. Discussed the effects of raising wages – research indicates this will encourage labour replacement. Noted that this was an inevitable consequence – higher productivity but fewer employees.

#### **5. Designing a FPA system: questions to consider**

- a. Presentation by Gayathiri Ganeshan then group discussion.
- b. Discussed who would be the parties to an agreement. Noted that Cabinet did not specify whether both parties have to agree to open FPA bargaining. Noted that status quo collective bargaining is 'opt in' system.
- c. Discussed not closing off options at this stage – don't want to assume that FPAs are a subset of collective agreements.
- d. Noted an example of tripartite bargaining with universities in the past – agreement reached on pay increase, then detailed decision making on everything else in the agreement was devolved to the University level.



- e. Suggestion made that union density should not be a trigger threshold, because union density is low in some sectors which need FPAs.
- f. Discussed the Belgium model and how this would look using the diagram in the presentation on slide 5 (ie as a conceptual model, not about initiation). ACTION: Secretariat to use this diagram to represent different international models.
- g. Discussed the range of things that could be in FPA. Group discussed making FPAs permissive – framework could specify certain things that should be negotiated or in an FPA, then allow the parties to include other things. Noted that some of the things that should (or could) be negotiated in an FPA are:
- Hours of work
  - Leave
  - Overtime
  - Pay
  - Redundancy
  - Flexible work arrangements.
  - Skills and training
- These could be headings, or matters that must be discussed in bargaining. Group discussed a permissive framework.
- h. Discussed a 'ladder' structure to ensure there are incentives for employers: productivity-based pay. At the bottom of the ladder there could be a requirement on employers for training. Going up the ladder, this improves employees' skills, which increases productivity, and allows for increases in wages.
- i. Noted that building employees' skills also increases career resilience e.g. examples of companies having shut down, with employees having worked there for years but not used to training and thus limited transferable skills, and could not find new jobs or easily upskill.
- j. Noted the attractiveness for both sides of building in a skills element.
- k. Noted that building trust is very important for FPAs. May need minimum disclosure from both sides, eg for employer to show profit levels – this is easy for listed companies but harder for non-listed companies.
- l. Discussed the need to return to the agreements every few years, as the benefit is in the discussion between sector, employers and employees. Wage levels and expectations of working conditions will change over time and the FPAs will need to be adjusted.

## **6. Next meeting**

- a. Noted that the secretariat is proposing to undertake research on the current state of collective bargaining in New Zealand, and the level of co-ordination of employers and workers across sectors, occupations and regions.

## SUMMARY OF ACTION POINTS

Action	Responsible person	Due date
Secretariat to use the diagram on slide 5 of the presentation on design to represent different international models.	Secretariat	31 August 2018
Secretariat to illustrate different combinations of trigger, coverage and scope	Secretariat	31 August 2018

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT  
DRAFT

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #4

<b>Date</b>	16 August 2018, 1pm – 4pm	
<b>Venue</b>	BusinessNZ, Level 6, JacksonStone House, 3 – 11 Hunter St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Dr Isabelle Sin
<b>Other attendees</b>	Paul Conway (Productivity Commission, item 2)	
<b>Apologies</b>	Richard Wagstaff	
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac Katherine MacNeill	Beth Goodwin Alexandra Jackson Siobhan Walburn

#### 1. Welcome

Jim summarised his meeting with Hon Lees-Galloway this week, including:

- a. The goal is to both increase 'the size of the pie' and workers' 'share of the pie'.
- b. Discussion about Jim's interest in members of the panel travelling to Singapore and northern Europe to investigate how their sector-level agreement systems work.

#### 2. Productivity and wages – Paul Conway

Presentation by Paul Conway to set up discussion. (See slides)

The panel discussed:

- a. the link between productivity and wages. In addition to the traditional view of productivity increasing wages, it was also possible that increasing wages could lead to an increase in productivity, e.g. rising wages could incentivise firms to increase investment in technology to stay competitive.
- b. productivity increases could be 'spent' on increasing wages, or increasing profits, or lowering prices (or a combination). Factors that influence which of those occurs include labour supply and technology.
- c. natural trade-offs, including:
  - business confidence vs workers' wellbeing (higher wages as a factor)
  - flexibility in the economy vs security for workers.
- d. the role of flexibility (e.g. to set up sustainable business models) in an economy in contributing to firm productivity.
- e. potential factors that contributed to the slower rate of growth in productivity compared to other OECD economies including:
  - Population growth
  - Working harder vs working smarter
  - Average income/capita
  - Housing market

- Geographical isolation
  - Level of competition and collaboration between firms
- f. how to approach catalysing a change in productivity growth. Noted the importance of learning from international conditions, as well as looking at domestic conditions, and competition within New Zealand and with global markets as a driver for productivity growth.
  - g. the impacts of geographical isolation.
  - h. the effects of knowledge, innovation and management capability in New Zealand, in relation to other OECD economies.
  - i. the nature of globalisation changes based on technology. Noted the risk and effects of artificial intelligence on the labour market; including replacement of people.
  - j. generally: as firms become more capital intensive, wages rise – but there is a fear this effect will drop away. Paul noted that New Zealand's labour income share has not fallen as much as other countries because of the minimum wage increase.
  - k. the need for good communication of changes and minimise insecurity, including supporting those who lose jobs as a result of changes.
  - l. incentivising collaboration so small or low productivity firms grow or combine resources.
  - m. low income *over time* is problematic, and the need to be able to distinguish this from short term low income which may be less problematic.

**ACTION: Secretariat to provide Treasury report on the impact of minimum wage increase on employment**

**ACTION: Secretariat to provide data on those just over the minimum wage.**

**ACTION: Secretariat to upload Paul's and Alexandra's presentations to the shared workspace**

### **3. Productivity in collective bargaining: international comparisons**

Presentation by Alexandra Jackson (see slides).

The panel discussed:

- a. achieving productivity through the collective bargaining system, as opposed to an additional outcome.
- b. training as an entry point for achieving productivity. There is a balance to be struck between the public and private returns of training in the lowest socio-economic sectors.
- c. effective upskilling likely to work well when linked to the desired future for a specific sector or organisation, as well as the firm's product/goal.
- d. suggested approaches to training including:
  - i. How to learn.
  - ii. upskilling to be onsite and paid as a part of a work-day to incentivise attendance.
  - iii. Ensuring supply of training, e.g. by coordinating across an industry.
- e. the effects of low level of engagement with unions.

### **4. E tū experience of MECAs**

Presentation by John Ryall about E tū experience of MECA bargaining, and suggested implications for a FPA system (see paper).

The panel queried whether allowing employers to opt-out impacted on success. Noted that MECAs appeared to reduce wages rather than increasing.

### **5. Minutes from previous meeting**

The minutes of the previous meeting were confirmed with no changes.

## **6. Finances: Clarifying the Cabinet requirements for reimbursement**

In the previous meeting it was noted that the panel would be paid for 8 hours per meeting.

Following review of the Cabinet Office Circular it was agreed by the panel and secretariat that each member would be paid for 1 hour of preparation time and 3 hours per panel meeting, so 4 hours in total.

It was agreed that if a panel member was to present or was commissioned by the panel for a piece of work, they would be reimbursed for this as appropriate.

It was agreed that any invoices the secretariat had received would be paid, then a credit note would be issued by the panel member.

## **7. Next meeting**

Date: 31 August 2018, 1 – 4pm.

Venue: MBIE office, 15 Stout St.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #5

<b>Date</b>	31 August 2018, 1pm – 4pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Kirk Hope (on phone, joined at 2.45pm)	Vicki Lee Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Anthony Hargood	
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac	Katherine MacNeill Beth Goodwin

#### 1. Welcome and admin

- Apologies from Kirk (was able to join in by phone partway through) and Tony.
- Richard and Kirk will present on collective bargaining at Meeting 6 instead.

#### 2. Highlights of OECD analysis of collective bargaining

Presentation by Beth Goodwin (see slides).

The panel discussed:

- Previous approaches to collective bargaining in New Zealand, and the extent to which extension bargaining had been considered previously.
- Where New Zealand sits amongst OECD countries: on the most uncoordinated end of the spectrum of approaches to collective bargaining (disorganised decentralisation), and noted the OECD and ILO overall recommendation that countries would be better placed in organised decentralised models.
- Collective bargaining models are only one factor to consider in economic performance. Other important factors to consider are the wider social and economic model and the quality and sophistication of social dialogue. Changes to the collective bargaining model without considering this context could be damaging.
- The purposes of collective bargaining include to encourage participation and engagement by workers and employers in dialogue – the value of inclusiveness.
- Small and medium sized businesses (SMEs) in New Zealand may be facing difficulties accessing collective bargaining, both on worker and employer sides, where there were low levels of organisation in their sector – which a sector-wide collective bargaining approach could alleviate.
- SMEs could experience potential benefits from a Fair Pay Agreement of savings in transaction costs by working together on collective bargaining, as well as access to expertise and other scale benefits (technology investments, skills). A shared dialogue could also lead to wider benefits in the sector and other forms of collaboration between firms or workers.
- Fair Pay Agreements could reduce the risk of undercutting and enable firms to offer better conditions – but others could lose out from the process and depending on how flexible an agreement was, could potentially go out of business. There is a need for a dialogue on benefits for firms as much as improved conditions for workers.

### 3. Collective bargaining across industries

Richard and Kirk will present about collective bargaining at Meeting 6 instead.

### 4. Models and objectives for Fair Pay Agreements

MBIE has prepared a draft skeleton report for the Panel (see document 'Fair Pay Agreements: supporting workers and firms to share the benefits of economic growth'), with draft text in the 'Problem definition' and 'Objectives' sections for the Panel's feedback.

Topics of discussion:

- Flexibility.
- Inclusion/participation as an important theme – eg those who face perceived barriers to collective bargaining, such as small employers.
- Discussion of the benefits for small employers: transaction cost savings, collaboration on technology/product development; removing undercutting.
- Recognising the value of collective bargaining for society, not just for participants.
- The need for cultural maturity to achieve successful bargaining – collaboration between participants. Dialogue could be as useful as the resulting agreement.
- Draw out specific problematic practices in the Objectives section – exploitation, not just regulatory non-compliance but (eg) not offering enough hours to make a living.
- More description needed on what 'race to the bottom' is.
- A need to understand the scale of the problem sectors/practices.
- Future-proofing the economy.

Presentation by Katherine MacNeill on 'Fair Pay Agreements – design choices' (see slides).

Topics of discussion:

- Recognition of the need to design a FPA system to address particular poor outcomes, with possibility that other sectors/industries could use the system if they saw benefit – the problem needed to be acute enough to justify imposition across a sector or occupation, as MECAs already provided a voluntary route for some firms to organise.
- Independent contractors.
- Whether problems identified are criteria, or indicators.
- Inter-relationship with pay equity system.
- Whether long-term low wage is the problem, or any low wage work.
- Future-proofing the economy: training is key. See eg the Care and Support Workers Agreement. **ACTION: Secretariat to send the training section of the CSW agreement to Panel members**

Scope

- Noted firm level agreements could be allowed to supplement a fair pay agreement
- Scope: suggestion we set topics mentioned in meeting 3, and allow parties to add more.

Initiation

- More coordination on both sides will be key. Where union membership is low in a sector, the question remained who would coordinate employee representation in a fair pay process. Employer side will need coordination too. However, lack of coordination should not be a reason not to participate. Noted that many industries have some form of coordination. Multiple representative groups may need to be involved.

- Representativeness threshold: discussion of a threshold of representation needed to initiate bargaining. Figures between 10% and 30% were discussed, or the lower of a percentage threshold or an absolute number (eg 1000 people). Alternatively, could have several levels of initiation thresholds – a first lower threshold, resulting in a grant of support and a time limit to reach the second threshold. **ACTION: Secretariat to report back on representativeness thresholds used in other countries**
- Noted that if initiation threshold is set too low or high, likely to face problems of viability. Too low and there would be potential for discrediting the process and the views expressed being too specific. Too high, and it may not be achievable.
- Noted that discussion needed about whether a number or percentage would apply to union members, all employees or all workers in a sector or occupation. Discussion of difficulty in creating mechanisms to poll an entire industry. **ACTION: Secretariat to report back on what other countries do to assess support for a sectoral agreement proposal.**
- Possibility of different thresholds required for initiation, bargaining and ratification. Firms or workers may not be aware or engage in process until affected. Suggestion made that initiation threshold could be set low to start a dialogue in the sector on wages and conditions.
- Suggestion of a link between initiation threshold, and union access to employees – a higher threshold could mean greater access needed.
- Noted that participants will need help to learn how to bargain: may have low skill levels and experience in collective bargaining on both sides.
- Discussion of whether government would have an override role – to trigger based on public interest grounds. **ACTION: Secretariat to report back on how other countries do this.**
- Query of how might employers initiate a FPA. **ACTION: Kirk to consider how employers might initiate an FPA.**

Coverage:

- Noted that a mandate is easier to achieve if coverage is narrower, but may not address the labour market issues being seen. It could also result in many inefficient processes. Too wide, and the terms may be less prescriptive to cater for wider interests, and not gain traction on the problem to be addressed.
- Occupation, sector, or both? Observation that if this is left up to the parties, it could result in 'industry' being the default, as they are relatively more organised.
- Suggested option of trying to initiate at a broad sector level, with fallback available of instead initiating by a subsector if successful in achieving threshold in a particular subsector.
- Setting coverage too narrow risks duplicating bargaining effort in many very similar sectors.

**ACTION: Secretariat to present existing data on:**

- people with multiple jobs
- underemployment
- qualitative information from Labour Inspectorate
- what we know about sectors that show behaviours in the 3 bullets on slide 5
- income adequacy
- number or percentage of target groups who are on working holiday visas – impact of immigrant workforce

**ACTION: Secretariat to summarise all design questions and send to Panel for consideration**

**ACTION: Secretariat to prepare two 'straw men' models, each incorporating an answer to each design question, for Panel to discuss preferences.**

## 5. Administration



The Panel agreed preparation time for this meeting was 2 hours.

Note Caroline apology for 13 September and Vicki apology for 27 September.

Next meeting: 13 September 2018, 1 – 4pm. Venue: MBIE office, 15 Stout St. **ACTION: Secretariat to resend calendar invite for 13 Sept.**

Change meeting time for 27 Sept to 12-3pm.

**ACTION: Vicki to present on 11 October on perspectives of her sector.**

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## MINUTES AND ACTION POINTS

### Fair Pay Agreements Panel: Meeting #6

<b>Date</b>	13 September 2018, 1 – 4 pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Tony Hargood Kirk Hope	Vicki Lee John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Caroline Mareko Katherine MacNeill (MBIE)	Paul Stocks (MBIE)
<b>Secretariat (MBIE)</b>	Ruth Isaac Gayathiri Ganeshan	Beth Goodwin

#### 1. Welcome and admin

- Minutes: for agenda item 4, remove reference to “prevent an FPA” in second last bullet point under Initiation. Panel discussion had primarily focused on a governmental role in triggering an FPA.

#### 2. Presentation: trends in collective bargaining

Presentation by Stephen Blumenfeld (see slides).

Points from presentation and discussion:

- Collective bargaining coverage has decreased proportionately – not keeping up with growth in the number of jobs in the economy.
- Extension of coverage: 11% of all collective agreements extend coverage to people who aren't union members or new employees (in their first 30 days). These extensions are requested by both employer and unions in bargaining, rather than just either side.
- Unions may see passing on as desirable when to do otherwise might lead to disharmony in employment terms and conditions.
- Bargaining fee clauses exist but are rare.
- Bargaining structure:
  - Changes to ERA four/five years ago saying industrial action cannot be taken over bargaining structure have not had much impact.
  - There are currently 72 MECAs. This is the exact same number as five years ago.
  - MECAs are generally in health and education (excluding tertiary education).
  - MECA bargaining can be frustrated by competitive instincts between firms.
- Term of agreement: over time, CAs have become longer in duration. This is because of the resourcing required on both sides for collective bargaining.
- Weighted mean annual wage change by sector and industry (based on wage change for lowest paid job within coverage of CA): for sectors where there has been the greatest change (eg accommodation and food services), this is largely being driven by increases to the statutory minimum wage.
- It's rare to see wages being indexed to inflation in CAs, because parties prefer certainty, to know exactly what wages will be.

- Cumulative percentage change in labour market indicators: for workers on collective agreements, wages tend to keep up with labour productivity increases (more than for those not covered by collective agreements, whose wages tend to lag behind labour productivity growth).
- Distribution of reasons for annual increases: CAs are decreasing in prominence as stated reason for annual increases, but cost of living as a reason is increasing in prominence.
- Type of wage clause: increasingly, wages are being expressed as a range of rates. See changes in ERAB as reported back from Select Committee.
- Productivity/performance payments: salary reviews have become more prevalent, mainly in the public sector. The increase in productivity/performance payments is associated with a movement to a range of rates (because employers have a discretion to place employees within the range). However output can be hard to measure, especially on an individual basis.
- Types of training and skill development provision: in general, specific mention of training and skill development of private sector CAs has decreased over time (although not mentioned in slides). These provisions don't tend to link pay to skills development.
- Reflections on what to consider when developing FPA system: the downward trend in employers fund training and development. As three quarters of private sector CAs already have some sort of training provision, this might not be that contentious as an area for FPAs to focus on.

### 3. Presentation: collective bargaining experiences across industries

Presentation by Richard Wagstaff and Kirk Hope (see slides).

Summary of presentation:

- What makes good bargaining?
  - Good bargaining adds value to the entire employment relationship.
  - Collective agreements are forward-looking documents, and to reflect this good collective bargaining involves a conversation about where both the business and workers are going in the next few years.
  - Bargaining works best for employers when they can see it is transformational, ie affecting the whole business, not just higher wages.
  - Bargaining is hard to do where there isn't willingness to do it. If the approach to bargaining is transactional, it's harder to get all parties to the bargaining table.
- What does good look like?
  - Good outcomes are ones that both parties support.
  - Bargaining allows for intense, relationship-building discussion that addresses real issues.
  - Efficient bargaining is important – key elements include capacity and capability of bargaining parties, and timeliness.
  - Final bullet point should say “May involve third-party support”, eg mediation, facilitation. The Panel discussed the benefits of trained facilitators/mediators or some other form of third-party support.
  - It is harder to organise in industries/occupations with higher churn, but in these the union tends to play an HR function as well for employers. This allows for an uplifting of all parties' expectations about what best practice is.
- What does bad look like?
  - Bad faith: no real effort to honestly engage in negotiating a collective agreement.
  - There being a winner and a loser: one party feeling slighted. Employment relationships are ongoing, long-term relationship, and ending a bargaining episode with someone winning and someone losing does not bode well for this ongoing relationship.

- A zero-sum game doesn't grow the pie for anyone.
- Protracted processes lead to impatience with both employers and unions, and inevitably worsens relationships.

The panel discussed:

- Partnership Resource Centre has positive case studies about benefits for employers of CB
- CB can encourage innovation, but that may not necessarily be better for the worker
- Innovating towards more productive outcomes can mean less labour is required – broad coverage CAs could stifle such strong growth in productivity.
- What are the barriers to transformational bargaining? Lack of scale, culture (eg a winner/loser mentality), bargaining skills, one party feeling forced to the table.
- Good bargaining requires having skilled people in the room and strategic leadership that takes a long-term perspective. To do it at the sector-level might also require third party support, and potentially a role for government in supporting this sort of bargaining.
- Australia's third party role is more than this – it provides a decision maker, not just support.
- Different needs of small businesses, and higher relative cost of collective bargaining to them.

#### 4. Two possible models for a Fair Pay Agreements system

Presentation by Beth Goodwin (see slides).

Summary of **Model A**:

- Initiation threshold: combination of high threshold for objective initiation criteria + low threshold for parties' approval to begin bargaining.
- Coverage: narrowly defined at industry or occupational level. This is because the aim would be to address specific outcomes (tied to initiation criteria).
- Scope (what is in the CA): more specific scope for topics that must be covered but parties can add more if they wish.
- Ratification (same as for model B): 55% could either be a nominal count or a proportional count.

Discussion

- Likes noted:
  - At a higher-level, this model (of the two presented) more closely relates to the stated purpose for FPAs to prevent races to the bottom
  - The design features are targeted to addressing the problem
  - Potential as a backstop to achieve compliance where ERA and EC litigation have not altered behaviour.
- Concerns noted:
  - Similar job titles masking significant differences between regions and different businesses.
  - less flexibility for businesses in relation to scope under this model.
  - Locking businesses in to FPA terms (and business models) even once key objectives of FPAs are achieved.
  - Cost on SMEs to participate.
- Questions:
  - How would 'problematic industry' be defined? Will the Labour Inspectorate define it?
  - Could businesses opt out of an FPA when their milestones are met?

Summary of **Model B**:

- This would be for sectors/occupations that want to come to the table to improve. Therefore there is no objective initiation criteria, but made up for by requiring more employer/worker representation (than model A) to begin bargaining.

- Coverage could be broader than model A, without going so broad as to be impractical to decide who is in and who is out.

#### Discussion

- Likes noted
  - A more voluntary flavour, with its focus to provide opportunities for improvement
- Concerns noted
  - A few large players could create a cartel. (Possible mitigant: a test that competition effects of and FPA are acceptable)
  - Cost to small business
  - Not targeted at a clear problem or the 'bad' players in an industry. Risk that 'worst' industries won't trigger FPA bargaining.
  - Could create business uncertainty about who may be captured by an FPA – because if initiation threshold is met, they will have to enter negotiations
- Questions:
  - Would it be open to anyone, or not?

#### Discussion of the two models

- Could we have both?
- About a threshold for employer agreement to begin bargaining:
  - Are the sectors/occupations being targeted (eg through model A) likely to be the same sectors where employers already don't want to bargain for a CA? See issues with competitive instincts frustrating initiation of MECA bargaining currently.
  - Suggestions that it's unrealistic that any threshold of employers will ever be met. Risk of a white elephant regime: a system that is legislated for but never used.
  - How can balance be achieved to ensure all parties are in the right frame of mind to ensure a good bargaining process (rather than one party feeling compelled to participate)?
  - How to count employers – nominal, or proportion of the workforce that they represent? Pros and cons for both.
- Is there a role for a third party in approving initiation of bargaining?
  - Could be criteria set in law, or determined by a decision maker
  - This may not necessarily be the government of the day (ie a Minister) designating industries/occupations for FPAs.
  - This could take the form of a third party checking whether objective initiation criteria have been met (eg ERA, other independent body, tripartite forum. Government is probably not an option – ruled out by Terms of Reference)
  - Or a mechanism for resolving disputes about whether criteria have been met.
- Is there benefit in a two-step initiation process? Eg:
  - In some specific sectors/occupations, a set proportion of workers supporting initiation of bargaining is enough, and
  - In other sectors/occupations, a specific proportion of workers *and* employers need to support initiation of bargaining.
- How do you balance representativeness at initiation and then at ratification?
  - Eg if there is a low/no employer representativeness threshold at initiation, at ratification there can be a required proportion of employer support for an FPA.
- Risk of cartel behaviour:
  - Eg without there being a specific problem to solve in objective initiation criteria, is there a risk of big players creating a cartel and using an FPA as a front for monopolistic behaviour?
  - Eg could an FPA be ratified just by large employers, without any buy-in from small employers?

- What changes need to happen to the employer and worker organisation landscapes to enable FPA bargaining?
- Will FPAs spell out different categories of minimum entitlements based on regions or types of businesses within an industry?
- How should opt outs work?
- How will occupations and industries be defined, noting a review of ANZSCO (occupational classification system) is underway?
- What would the timeframe be?
- How would the initiation threshold be proven – would it use Stats NZ data to determine total size of industry? How will this work if ANZSCO is being reviewed?

Overall:

- No consensus on either model. Some indicated preference for Model A, noting neither presents a complete model.
- A suggestion that to be workable, a FPA system may need:
  - Initiation criteria in law,
  - Decision-maker saying initiation criteria have been met, and
  - Role for third parties in dispute resolution.

## 5. Administration

The panel agreed the default preparation time for this meeting was one hour. If members spent longer, they should email the Secretariat.

For members who presented:

- Stephen: preparation time of four hours.

Re the paper on training provisions in Care and Support Worker settlement provided: if a similar approach is taken with FPAs, is there a risk of upskilling workers out of jobs? Is this an issue parties can resolve through bargaining?

Next meeting: 27 September 2018, 12 – 3 pm (apology from Vicki).

## MINUTES AND ACTION POINTS

### Fair Pay Agreements Panel: Meeting #7

<b>Date</b>	27 September 2018, 12 – 3 pm	
<b>Venue</b>	Terrace Conference Centre, 114 The Terrace Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Tony Hargood Kirk Hope	Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Vicki Lee	Beth Goodwin (MBIE)
<b>Other attendees</b>	Stuart King (MBIE – item 2)	
<b>Secretariat (MBIE)</b>	Ruth Isaac Katherine MacNeill	Paul Stocks Alexandra Jackson

#### 1. Welcome and admin

The Group confirmed the minutes from Meeting 6.

#### 2. What we know: data summaries

Presentation by Stuart King (MBIE), see document 7C.

Stuart King provided the Group with ten sector / occupation data summaries and outlined what each data set meant. The data presented is a snapshot that does not necessarily show the full picture of incomes e.g. does not show the effects of government transfers. Data from the 2018 census will be able to be updated in early 2019; however, it is not expected that there will be significant change in the broad demographics over a relatively short period of time (5 years).

Points raised during the presentation and discussion:

- The Group discussion focused on the data for check-out operators, childcare workers and mixed crop and livestock farm workers as examples of occupations.
- The data helps to illustrate the difference between occupation and industry, as well as potentially helping to determine characteristics or criteria for FPAs, but only captures wages not working conditions.
- Many of the sectors/occupations were more dominated by employees rather than self-employed. This may be to do with the way many of the businesses in these industries are structured – while the firms themselves have contracts for services, those who work for them are employed by them and are not contractors.
- Acknowledged that in drafting the legislation, the inter-relationship between Fair Pay Agreements, Equal Pay and the Employment Relations Act will need to be considered in detail. FPAs are intended to be forward looking, unlike the Equal Pay Act, and would not be expected to involve back pay in the same way as the wider collective bargaining system does not.
- The competition effects of a FPA should be considered in detail, particularly in sectors with a diverse range of business sizes.

- There could be a range of similar sounding occupations which are diverse in practice in terms of powers and roles undertaken, with the example discussed of security guards and prison guards.
- The potential difficulties in enforcing the pay rates set in FPAs, particularly in a sector dominated by SMEs and the importance of information and promotion of understanding of FPAs to manage this risk.
- Gail Pacheco's work on re-skilling and pathways out of permanent low skilled work was mentioned. **ACTION** – MBIE to locate and circulate to working group.

### 3. Group discussion: thinking ahead to the panel report

Katherine MacNeill introduced the item and the Group had a discussion about the content of its draft report. The Group then split into two groups. The first group discussed the draft report outline and noted areas they thought needed further elaboration, or were missing from the draft outline circulated ahead of the meeting. The second group discussed the forward work programme and the areas for discussion over the remaining meetings. The Group reconvened to share what they had discussed.

Summary of Group discussions:

- The Working Group is generally in agreement on the broad design of FPAs; however, the Group is yet to reach a conclusion about a number of issues including a detailed problem definition based on labour price competition. They agreed the conditions discussed at earlier meetings of low wages or low wage movement, low turnover, lack of progression, and no or low levels of qualifications were all relevant factors. It was noted FPAs could also be a mechanism for promotion of collective bargaining and extending access to collective bargaining to smaller players; and a mechanism for a sector to drive a change in business models and lift wages and productivity.
- Areas where the Group is agreed:
  - The building blocks of the FPA as presented at earlier meetings, including at a high level on initiation, scope, and means to reach ratification
  - Ratification – needs to be both employers and employees, with a relatively high threshold
  - Broad agreement that it should be considered whether FPAs could apply to employees and contractors but further work on risks and challenges needed ahead of landing a recommendation
- Areas where the Group agreed further discussion and work is required include:
  - Initiation – this area needs further work and consideration by the group.
  - Dispute resolution - mechanisms to enable negotiations to conclude
  - Bargaining rules
  - Opt outs and exemptions
  - Scope
  - Coverage
  - Enforcement and monitoring
- The Group touched on MECAs and noted that while MECAs in the private sector have not proliferated, FPAs could be more attractive to employers as it is imposed on their competitors and therefore creates a level playing field. It was noted that it could be possible to have regional variations built into FPAs, as is the case in France.
- The Group discussed the possible FPA models from the last meeting and whether there could be a synthesised Option A+B (targeted and enabling) model where both models of FPAs were possible depending on the circumstances at initiation.
- Acknowledged there may be design questions that the panel only looks at a high level (e.g. dispute resolution) which could be left to detailed design stages.



- While the aim is to reach a consensus view, if the Group is unable to reach consensus on certain design elements the report could be structured to be clear about areas of consensus as well as differences.

#### **4. Administration**

- The Group agreed that the next two meetings would be four hours in duration in order to concentrate on design issues that require further discussion and decision.
- The Group was asked whether any members wished to present a possible FPA model to the wider group. Richard Wagstaff and John Ryall offered to present at the next meeting.

Next meeting: 11 October 2018, 1 – 5 pm.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## MINUTES AND ACTION POINTS

### Fair Pay Agreements Panel: Meeting #8

<b>Date</b>	11 October 2018, 1 – 5 pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Tony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Katherine MacNeill (MBIE)	
<b>Other attendees</b>	Doug Martin (item 2)	
<b>Secretariat (MBIE)</b>	Beth Goodwin Ruth Isaac	Tracy Mears Paul Stocks

#### 1. Welcome and admin

The Group confirmed the minutes from Meeting 7. The agenda was rearranged because Kirk, Tony, Ruth and Paul were delayed.

#### 2. MBIE presentation: remaining building blocks

Presentation by Beth Goodwin (see document 8B). This discussion was divided into two parts but minutes are recorded together for simplicity.

##### International obligations

- **ACTION:** Secretariat to provide advice on our international obligations and whether they constrain the Group's options, for example in relation to imposing a Fair Pay Agreement on all affected parties, or building in an element of compulsion (such as final offer arbitration) if parties cannot agree.

##### Coverage – industry or occupation?

- Both alternatives have downsides.
- Risk of perverse incentives by defining one or the other eg an industry could suffer if there is widespread practice of firms bringing services inhouse to avoid workers being covered.
- Group tending towards leaving the question of industry or occupation to the parties
- But also a question of who decides the extent of coverage when there is disagreement, as 'parties' don't yet formally exist. The point of this is trying to determine extent of the parties.
- Group noted that categorisation is already difficult - there is already wide difference within occupations, eg a five star chef is very different to a fast food cook.

##### Coverage – employees or also workers?

- Group discussed other parallel processes, including that MBIE will be doing work in 2019
- MBIE shared in confidence the recommendations of the Film Industry Working Group, noting common issues were discussed.
- Group discussed including a legal test in the legislation, but also noted this can create uncertainty.
- The Group discussed that a solution should avoid anomalous outcomes (eg a mass redesignation of employees as contractors) and focus on exploitation.

- The element of 'vulnerability' is important.
- Group noted the implications on competition, including the risk of a FPA being used in an anti-competitive way
- Public interest principles as a potential way to address competition issues.

#### Coverage – opt outs, carve outs, phasing

- Group tending towards having some kind of opt out, but suggestions that it would need to respond to genuine need (not automatically applied or blanket exemptions), temporary, time bound.
- Options discussed include: a de minimis (eg small firms, based on turnover), firms in financial difficulties, hiring long-term beneficiaries.
- Group noted the potential effects on competition either way: if no exemptions allowed, this could be a barrier to entry. An exemption for small firms could be a barrier to growth.
- Group noted that the majority of firms are SMEs but the majority of employees work for larger firms. Any opt out would need to consider how many people it could affect.
- Group noted the risk of arbitrage (eg structuring a firm to qualify for an exemption), but that that exists in any legislative system.
- Group felt there was no need to pursue an option to exclude high-earning workers – rather, the terms of an FPA would simply not be relevant to them.

#### Bargaining process rules

- Group tendency that having some rules would be necessary, enough to create a system to enable parties to negotiate a solution themselves.
- Group discussed that while the aim should be a system with incentives for parties to come together to bargain, without any threat of compulsion we may risk no agreements being reached.
- Some options for compulsion once bargaining had begun:
  - A duty to conclude and ability to take industrial action (but noted that government has ruled out this option)
  - A duty to bargain in good faith, and the threat of final offer arbitration – for example, this applies to police, and was a feature in Labour Relations Act 1987
  - An 'offramp' – a way for parties to exit bargaining without reaching an agreement (but noted that this would make it unlikely that any agreements are reached)
- A discussion about whether there will still be a need for firm-level collective agreements if there is an FPA – conclusion that yes, an FPA will not cover all matters, so there will still need to be an individual employment agreement for each employee in parallel (or a collective agreement).
- Noted that if a firm and its workers were negotiating a collective agreement at the same time as an FPA ( eg to save time/effort), there would need to be clarity on whether workers could still strike in relation to the collective agreement negotiations.
- Noted the potential fiscal implications to the Crown if the Crown is a party to the FPA and there is a final offer arbitration option.

#### Support for the bargaining process

- A suggestion that if the purpose of FPA bargaining is to be transformation within a sector, the parties may need help to develop the vision of what the common purpose result could be, especially the first few FPA bargaining processes
- Some discussion about the Singaporean system which includes government support for workforce training
- The (former) Partnership Resource Centre provided pre-bargaining training sessions, for example on interest-based bargaining.
- The Group noted it is currently difficult to get Employment Relations Authority to facilitate bargaining, even if both parties consent. A suggestion that structured facilitation needs to be readily available.

Dispute resolution (during bargaining)

- A suggestion that there may be a conflict in the Employment Relations Authority facilitating and then switching to a dispute resolution role – a suggestion of the Employment Court.

Enforcement and dispute resolution (after agreement concluded)

- Group felt the normal spectrum of reasons for non-compliance is likely to apply: some ignorance, some genuine belief that not covered, a few deliberately non-complying.
- Suggestions that the Labour Inspectorate could play an enforcement role, eg when possible non-compliance is drawn to their attention.
- Discussion around existing mechanisms or business touchpoints which could be utilised to alert employers of their obligations, eg the Employment Agreement Builder, [www.business.govt.nz](http://www.business.govt.nz).

Conclusion

- **ACTION:** Secretariat to clarify whether Australian employers need to ratify an agreement.
- The Group agreed that once agreed a FPA should not apply retrospectively.

Variation and renewal

- The Group noted that as transaction costs of bargaining are likely to be high, so suggested the agreement should remain in force for longer. A suggestion of five years.
- Suggested to build in consultation between parties before an agreement expires to consider if they want it to extend.
- Different opinions on the likely effect of removing a CA if the objective has been met – improvements may atrophy.

### 3. Presentation: Doug Martin, Martin Jenkins

Doug spoke to the Group to expand on points made in his blog post (see Document 8C) about a Fair Pay Agreements system and drawing on his experience with the Care and Support Workers settlement. His points are summarised below.

- Initiation: noted the high worker turnover of some sectors which may be a focus of a FPA system, which creates questions about how would you determine whether a threshold has been met – a percentage of what group? He thought it may need a petition, eg 1500-2000 workers. 15-20% approval to initiate would be ambitious.
- Coverage of an FPA will need to be determined early in the bargaining, which will likely need to include a list of affected employers. Initiating party will set their expectation. Early engagement will be needed on this point, with employers having a chance to argue they are not covered. On the question of industry or occupation, Doug suggested to leave this to the parties, while noting that if classified as occupation will make it hard to get employers together. Caution not to unintentionally limit mobility of workers between industries.
- Representation rights will need to be established on both sides, eg for non-union members. Business groups will need expertise in supporting members in bargaining.
- Scope – it is sensible to define what a FPA must cover (wages, core conditions, hours of work, overtime, progression etc) but it may be that conditions vary more than pay does. Doug advised to set up a basic framework to contain the scope, then take the time to flesh out detail.
- Dispute resolution – some form of determination can encourage parties to reach their own agreement. If it were a choice between final offer arbitration and a third party decision maker, prefer FOA as it can create the right incentives, its measure of success is not being used. But emphasised to build a lot of steps into the process before this including strong facilitation of bargaining.
- The Group noted that in MECA bargaining, approximately the same number of MECAs have existed when there is an option to opt out as when there is a duty to conclude (37 private

sector MECAs existed in 2004 when the duty to conclude was created, and still 37 in 2015 when the employer opt-out was added).

- Ratification can be challenging in worksites with no union representation.
- Ratification Doug suggested 50%+1 on both workers' and employers' sides. If not ratified, parties would return to bargaining.
- As a general principle, leave as much to the parties to decide as possible.
- A suggestion to think about a transition phase, eg large employers first.

#### **4. Report back: Singapore download, Jim, Paul and Richard**

Paul summarised what the trio had learnt in their meetings in Singapore.

- Progressive Wage Model (PWM) is only in sectors which are not trade-exposed, but with low wage and high numbers of workers.
- It has resulted in a minimum wage which is still only approximately half the level of NZ.
- Under PWM, wages lag productivity, and if profitability is lagging then bonuses are paid, ie not built into the cost structure.
- Tripartite approach is very strong, with the state playing a strong role. A push for consensus.
- Most sectors have an Industry Transformation Map, preparing for the new economy and disruption expected in many sectors. PWM sits in this context: lifting wages and encouraging uptake of technology.
- Other context: a focus on attracting foreign investment, tight control over migrant labour, more inequality than NZ.
- PWM was coupled with government subsidies for training, a focus on microcredentialling.
- A view in Singapore government of minimum wage as being a blunt instrument
- Trio's view was that although Singapore is a very different system to NZ, the most relevance to our FPA work lies in the focus on upskilling, and the bigger picture of transitioning the workforce to the new economy.

#### **5. Presentation: Richard Wagstaff and John Ryall 'Proposed Fair Pay Agreements Design'**

Richard Wagstaff presented the model he had developed with John (see Document 8D). A summary of the Group discussion is below.

- The ER Act is meant to promote bargaining but in practice it contains hurdles.
- In relation to workers' representation and unions' access to non-unionised workers, a suggestion that workers could form a union or seek access for an existing union. There should be an ability for workers to authorise a union to represent them.
- A suggestion of the old Labour Court model of representative panels, with 3 members (1 judge, 1 employer rep and 1 worker rep) as arbiter.
- The Group recognised the need to avoid negative effects on competition, and there was some discussion of which entity could assess and make a determination on that point.
- A suggestion to build in a review of the system after 1-2 FPAs are concluded, to adopt lessons from those processes.

#### **6. Administration**

- The Group agreed two hours preparation time for this meeting.
- Vicki Lee will present about a small business perspective at the next meeting.
- Richard Wagstaff is an apology for the next meeting.

Next meeting: 25 October 2018, 9am – 1pm.

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #9

<b>Date</b>	6 November 2018, 12.30pm – 4.30pm	
<b>Venue</b>	Room Te Aro 4, Terrace Conference Centre	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Vicki Lee Caroline Mareko John Ryall Dr Isabelle Sin
<b>Apologies</b>	Richard Wagstaff	
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac Katherine MacNeill	Beth Goodwin Harry Chapman

#### 1. Welcome and administration

The Group noted that the Minister expects to have the report by 30 November, and there is only one substantive meeting left.

The Group confirmed the minutes from meeting 8.

#### 2. International Obligations

Beth Goodwin briefly introduced a paper the secretariat had prepared on New Zealand's International Labour Organisation (ILO) obligations.

- It is hard to make absolute statements in regards to the ILO obligations – everything turns on the facts of the particular case. The paper should help the group to have a general sense of the ILO obligations, to keep in mind when looking at the draft Report and recommendations.

#### 3. Draft Report

The group discussed the draft report.

- The Group agreed the context section in the report was important to set the scene for their recommendations later in the report. The Group noted that overall it might be too long, and that in some areas the analysis needed to be strengthened. No decisions were made on which areas to delete or strengthen.

#### Initiation

- Group discussed that if initiation was made too easy then the transaction costs will be high: businesses will spend their whole time negotiating. There was general agreement that the 10% or 1,000 workers threshold was appropriate.
- Group discussed who would be the appropriate body to determine if the public interest test was satisfied. There was agreement it should be an independent, quasi-judicial body (not a Minister), perhaps similar to the Ombudsman, or officers of Parliament.

- Group discussed how easy it would be to get a group of workers together and organised. It may depend to some extent on the industry (e.g. agricultural labourers would be hard to organise). Group noted that if it wasn't possible to organise the workers they could fall back to the other initiation option and rely on meeting a public interest test.
- Group discussed whether there could be an independent body which could initiate an FPA on the workers behalf.
- Group noted we need to be careful of impacts of any agreement on competition (e.g. big employers mandating specific expensive training for all workers which small employers couldn't afford), particularly if the injured party wasn't at the negotiating table. This could be mitigated to some extent by having a representative from small employers at the table.
- Group discussed what would happen if workers didn't ratify it – would it go back to ratification or would that be the end of the process? There were differences of opinion on this issue.
- Group notes that if the threshold is too low at the beginning there's a risk that the agreement won't get across the line in the end.

#### Coverage

- Group discussed whether there should be an opt out for employers at the start of the process. The Group discussed that this could protect small businesses from the impact of changes they could not accommodate, but on the other hand could undermine the point of the FPA system and fail to prevent a race to the bottom.
- The Group discussed that FPAs might encourage automation and undermine some jobs, but noted that this was probably inevitable.
- The Group noted there should perhaps be some allowance for regional variation put into the framework for FPAs.
- The Group discussed whether there should be set criteria or a limited set of circumstances for opt outs, or whether this could be resolved through negotiations.
- The Group also discussed whether there should be exemptions for recent entrants to the labour market (e.g. people who are not in education, employment or training). The Group noted that if this type of exemption was put in place it should be time limited.

#### Scope

- Group noted that the ambition is that FPAs improve productivity in an industry.
- Group agreed that skills and training should be mandatory, but was unsure how productivity could be practically implemented. The Group noted that one benefit of including productivity is that employers and workers will have a discussion about it. One option could be requiring parties to at least discuss productivity.
- Group agreed that 'nuts and bolts' governance issues should be mandatory.
- Group agreed objectives should also be mandatory.

#### **4. Presentation: Vicki Lee**

Vicki presented to the group on small businesses in hospitality (see document 9H). She made the following points:

- Noted that hospitality is the most exposed industry to the minimum wage, and has a high percentage of costs relating to labour. The industry faces a number of challenges, and some businesses have very little 'room to move' and absorb minimum wage increases.
- Noted that Westpac has suggested that the minimum wage is a blunt instrument and not a good way of targeting poverty.
- Noted the regional dimension to wages, and notes the minimum wage can have a different impact depending on the relevant region.

- Noted that the 'Progressive Wage Model' where workers progress to more senior jobs and receive commensurate wage increases is attractive. Also notes that the high minimum wages makes it difficult to allow for this progression through raising the floor to quite a high level.
- Noted that FPAs should take the pressure off the minimum wage by adding another tool to the toolkit.
- The Group noted that FPAs might not always involve setting wages – could just set terms and conditions.
- The Group discussed that there may be an opportunity to incentivise the uptake of FPAs through the government introducing a training incentive. The Group noted that this may be pushing against its terms of reference but may be worth providing advice on in any case.
- **ACTION: The Group requested that the secretariat provide information on the current system for funding industry training, including the breakdown of costs for the various parties, and whether cost of employee time is covered.**
- The Group discussed whether FPAs should encourage employers to be a member of the relevant industry group.

## 5. Draft Report – part 2

### Bargaining parties

- Group discussed whether it should be compulsory for the worker representatives to form a union to be a bargaining party. On the one hand it is easy to form a union, but on the other it may create an unnecessary obstacle.
- The Group noted it would be easier for an entity to bargain so individual negotiators could swap in and out if needed.
- The Group discussed who should pay for bargaining, and notes that in collective bargaining currently the employer typically pays for bargaining. There may be a role for the state/employers to share the costs in relation to FPAs.
- The Group noted it may be difficult in practice to spread costs across an industry (e.g. through a levy or industry organisation). Alternatively the government could pay for negotiating costs.
- The Group discussed that there would need to be a mechanism for workers being able to attend meetings during work hours. There would need to be a mechanism for non-union members to also have paid time.

### Dispute resolution

- The Group discussed whether there was a consensus on final offer arbitration. Discussion about whether there should be the ability for arbitration to end in 'no agreement'.
- The Group also discussed whether arbitration was before ratification, or whether arbitration should be the final step (no ratification required). If there's a failure to ratify it should go to arbitration, but does that arbitration lead to an FPA automatically?
- The Group noted that if ratification was not required after arbitration, then only 10% of workers agreeing could result in an FPA. This issue could be mitigated by allowing for a 'no outcome' arbitration process.
- The Group discussed that if there was a safety valve at the beginning of the process (e.g. an employer opt out) then that would take pressure off the end of the process.
- The Group discussed the link between arbitration and the ILO conventions. The Group noted it may need to highlight in its report the implications of the 'no strikes' rule in the terms of reference.
- The Group noted that an FPA doesn't have to go beyond terms and conditions, so there could still be an agreement even if the parties couldn't agree on rates of pay. In addition, there could be regional variation in the agreement in relation to pay.



- The Group discussed what was meant by facilitation and arbitration and who should be fulfilling these roles. It was noted the FPA system should ideally be like a conciliator, not the ERA system where it is difficult to access the facilitation role. There could also be a combined mediator/arbitrator who could switch roles as required.

#### Ratification

- The Group noted that the process should be prescribed in legislation.
- The Group discussed what appeal rights would be appropriate. Appeal rights may be appropriate where there has been a poor process or undue influence over parties. There was a suggestion that, overall, appeal rights should be limited to coverage and process issues (not the substance of an agreement).
- The Group agreed it would be appropriate for parties to be able to ask a body for a determination on whether they were covered by an FPA.

#### Miscellaneous draft report discussion

- The Group noted that its report will provide useful information for the public debate on FPAs, so there is a wider audience beyond the Minister. Therefore the context section of the report will be important.
- The Group discussed the best way to provide comments on the Draft Report.
- **ACTION: The secretariat will combine all comments on the draft report into one document.**
- The Group discussed whether the content on collective bargaining experiences was useful. It was agreed that the section should be kept, with the unions providing tracked changes feedback on that section.

#### **6. Wrap up**

- The Group noted the preparation time for the meeting had been about four hours, with the exception of Vicki who had prepared a presentation.
- The secretariat will reschedule the meeting which had been proposed for the 28<sup>th</sup> of November.
- The next meeting is on 22 November 2018.

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #10

<b>Date</b>	22 November 2018, 12.30pm – 4.30pm	
<b>Venue</b>	Room G.03, MBIE, 15 Stout St	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Vicki Lee	Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Kirk Hope	
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac	Katherine MacNeill Beth Goodwin

#### 1. Welcome and admin

- On the Minutes from Meeting #9, change 'proscribe' to 'prescribe' on page 4.
- As Kirk was an apology, the Group decided to extend the upcoming meeting on 27 November: 9.30am – 1.00pm.

#### 2. Finalise draft Working Group report

The Group worked through the table in document 10F(A), making decisions in relation to members' comments on wording in versions 0.5 and 0.6 of their Report. Most decisions were reflected as changes written straight into draft 0.7 of the Report during the meeting, and only significant decisions or discussions have been recorded here.

- Title: Group discussed potential titles for their Report but decided to retain the working title, replacing 'economic growth' with 'productivity'. The Group felt that 'fair pay agreements' is not an ideal label for this sector-level bargaining system but there was no consensus on an alternative.
- In relation to the labour/capital share of income, members discussed the various drivers of each and discussed relative and absolute income growth. Members decided to remove subjective statements in this section.
- In relation to preparing for the changing nature of work, the example was given of some cities' parking wardens' pay rates being raised to the Living Wage, while also introducing new parking tracking technology and upskilling the wardens in managing unhappy clients.
- **Action: MBIE to send members an example of case studies about facilitation created by the old Partnership Resource Centre.**
- Public interest test criteria: Group decided that all suggestions in the list in Annex 1 of document 10F(A) should be included in the Report, but as examples only, and the Report should recommend that the Government consider what criteria should be included in legislation.
- Exemptions: Group noted that the reasons for exemptions for employers would be quite different to any exemptions for workers. Group all agreed that any exemptions should be limited/rare and timebound/temporary, but would leave decisions about the nature of exemptions to Government.

- Group again discussed whether coverage should be for employees or workers, and most reconfirmed that it was necessary to cover all workers.
- On scope: Group clarified that an FPA could not set a ceiling for terms: workers and employers will always be able to agree to exceed the terms in an FPA through an enterprise agreement.
- The Group discussed whether workers would be able to be represented by groups other than unions, and concluded no, because unions are the primary form of worker organisation, and it is very easy to set up a new union.

### 3. Dispute resolution

Members suggested and discussed two main options for bargaining and dispute resolution processes:

- 'ER Act plus' model – this option would be based on the existing process in the Employment Relations Act, with changes or additions only as appropriate. One major addition would be experienced neutral facilitators, involved (or available) from the outset. The Employment Relations Authority (ERA) would make binding determinations (not arbitrations, because ERA is a court). This would require a change to the ERA's jurisdiction, as currently it cannot set the terms and conditions of employment. A right of appeal, possibly to the Employment Court.
- 'Conciliation / arbitration' model – this option would involve a conciliator with powers to bring parties towards an agreement, and to make a report to an adjudication body if the parties fail to agree, but not able to make a determination. Arbitration would be independent, quasi-judicial, by a panel with specialist arbitration skills (rather than the generalist ERA), which could be advised eg by Business NZ and CTU. This option would require new institutions, as the functions would be too different from those of existing bodies.
- Members preferred the 'ER Act plus' option.

### 4. Photo options

- Members asked for more diversity in photo options for the front cover of the Report.
- **Action: MBIE to look wider for photo options.**

### 5. Wrap up and next steps

- Members agreed on 7.5 hours preparation time.
- Next meeting 9.30am, 27 November 2018

# MINUTES AND ACTION POINTS

## Fair Pay Agreement Panel: Meeting #11

<b>Date</b>	27 November 2018, 9.30am – 1.00 pm	
<b>Venue</b>	MBIE, 15 Stout St, Wellington	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Dr Stephen Blumenfeld Steph Dyhrberg Anthony Hargood Kirk Hope	Caroline Mareko John Ryall Dr Isabelle Sin Richard Wagstaff
<b>Apologies</b>	Vicki Lee	
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac	Katherine MacNeill Beth Goodwin

### 1. Welcome and admin

### 2. Finalise draft Working Group report

- Members discussed 9(2)(ba)(i), 9(2)(g)(i) that employers should be able to opt in to an FPA, rather than being automatically and compulsarily included.
- Under that proposal the FPA would act like a multi-employer collective agreement and a code, to create a voluntary industry standard.
- Others thought there was little chance that employers would actually take up that opportunity, particularly those competing primarily on low labour costs.
- Group decided not to set out the full alternative proposal in an appendix, but instead include a prominent description of this alternative view in the body of the Report, naming it as being the view of Business New Zealand.
- 9(2)(ba)(i), 9(2)(g)(i)
- After considering the PRC case study provided, the Group decided not to include any such examples in the Report.
- Group decided that exemptions should be determined at the time the agreement is made, which then may be triggered over the lifetime of the agreement.
- Group revisited the discussion of which types of situations would be able to have exemptions. Members noted the potential that exemptions could harm the people they were intended to benefit. Group agreed that more analysis is needed and noted that the Government would need to look into what other countries do.
- Dispute resolution: members noted that their overall principle is a simplified process, and not to tie parties up in litigation.
- Group agreed to use the bolded headings as recommendations, and to add a 1-2 page summary.

The Group suggested other more minor changes to the Report – these changes were made directly into version 0.8 of the Report.

### 3. Photos for Working Group Report

- Group agreed on photographs 3, 8 and 9.

**4. Wrap up and admin**

- Members agreed on 3 hours preparation time.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## MINUTES AND ACTION POINTS

### Fair Pay Agreement Panel: Meeting #12 (small group meeting)

<b>Date</b>	19 December 2018, 9.00am – 10.30am	
<b>Venue</b>	Room G.15, MBIE, 15 Stout St	
<b>Attendees</b>	Rt Hon Jim Bolger ONZ (Chair) Kirk Hope Vicki Lee	John Ryall Richard Wagstaff
<b>Apologies</b>		
<b>Secretariat (MBIE)</b>	Paul Stocks Ruth Isaac	Katherine MacNeill Beth Goodwin

#### 1. Welcome and admin

- Jim noted the wider Working Group have authorised this small Group to make final changes necessary to resolve outstanding matters needing agreement.

#### 2. Discuss draft Working Group report

- The Group discussed the remaining areas of difference, and agreed on text to insert into the Report to reflect the business alternative view.
- That text is reflected in the final Report.

#### 3. Wrap up and next steps

- Members agreed to share this version with the wider Working Group, with an 'embargoed' stamp, and for MBIE to deliver to the Minister.
- Members agreed not to share the contents of the report.
- If asked, members are requested to say the Report had been delivered to the Minister, and refer any questions to the Chair.
- MBIE to advise Working Group members when a date for releasing the Report has been settled.