



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Fair Pay Agreements

A FRAMEWORK FOR FAIRNESS

OCTOBER 2019

Executive Summary

WHAT WILL MAKE A GOOD FAIR PAY AGREEMENT LAW

1 Fair Pay Agreements will enable working people to improve their terms and conditions of employment, develop their skills, have these skills recognised and work with employers to improve performance and workforce planning across an industry or sector.

This is the purpose of Fair Pay Agreements. Fair Pay Agreement law will be a strong framework with solid foundations creating effective agreements that substantively lift the terms and conditions of work in industries or sectors.

2 Working people will have a voice through their unions to negotiate Fair Pay Agreements.

A good law will enable working people, represented by their unions, to effectively negotiate with employers. As recognised by our current employment law, the inherent inequality of the employment relationship means that legal safeguards are required to ensure fair and equitable negotiations. These include requirements on parties to initiate bargaining, bargain in good faith, facilitate union access and communications, and conclude bargaining. Any requirements for initiation of bargaining, such as representativeness or public interest thresholds, should be set at a level no higher than those recommended by the Fair Pay Working Group. They must avoid setting barriers that would risk tying up the process in expensive and time-wasting disputes before the parties even get to the bargaining table. The pillars for any initiation thresholds must be simple, reasonable, and achievable.

3 Fair Pay Agreements should cover every person working and every employer in a defined industry or occupation.

Fair Pay Agreements need to apply to everyone, both employers and workers, in an industry or sector so standards are maintained for workers and no cowboy employers undercut the competition with cheap labour. This means that Fair Pay Agreements need to cover all workers, whether they are classed as employees or contractors. Any exemptions should only be by agreement in very exceptional and temporary circumstances.

4 Fair Pay Agreements need to be about more than pay rates - they need to provide a minimum standard for decent incomes, career pathways and good working lives for New Zealanders.

In the future the way we work will change, and we will need to make choices about the aspects of good work that will be fundamental to New Zealanders' wellbeing. A decent pay rate only delivers wellbeing if it is matched with safe and secure hours of work, training, career progression, flexible workplaces, superannuation, redundancy provisions, overtime and leave agreements. Whatever the future, these should be the standard working minimums in an industry or sector.

5 If union members and employers in an industry or sector can't agree on what's fair, they will be able to go through an independent assessment process to determine a Fair Pay Agreement.

The normal process for negotiation of Fair Pay Agreements should mirror standard collective bargaining requirements to bargain and conclude agreements in good faith. However, where agreement cannot be reached, the Government has indicated that parties to Fair Pay Agreements will not have recourse to industrial action. In such cases, parties need access to a binding independent resolution process. The arbitrator needs to look at each part of a proposed Fair Pay Agreement and decide on what is right for the industry or sector in its specific context.

6 If a Fair Pay Agreement is reached, it should be final.

Where a majority of workers and a majority of their employers settle an agreement, or if a settlement is reached through an arbitration process, it should be final. A good law must be based on certainty. When a Fair Pay Agreement is settled in an industry or sector, through a process involving employers and workers from that industry, it must not be subject to any further tests or administrative hurdles.

Working Kiwis Need Fair Pay and Conditions

Working Kiwis need the Government to pass good law ensuring a strong structure that will allow them to negotiate Fair Pay Agreements. We need a framework for fairness.

There are some basic things that are essential for this framework to be fit for purpose, to make sure that Fair Pay Agreements can meet the needs of working people.

The Government already has detailed advice on how to construct the framework for Fair Pay Agreements, from the report of the independent Working Group led by former Prime Minister Jim Bolger. The Working Group was set up by Government to design Fair Pay Agreements as ‘a system of bargaining to set minimum conditions of employment across industries or occupations’.¹ It was an inclusive process, with representatives of both employers and working people, and with expert advice from officials. The Working Group was asked to come up a plan to implement Fair Pay Agreements and that is what they delivered.

Now, working people expect the Government to follow through, and stick to the plan laid out in the recommendations of the Working Group, to set up a strong framework for fairness.

Keeping to the Plan

The detailed recommendations of the Working Group cover each stage of the process that working people will need to successfully negotiate Fair Pay Agreements in their industries or sectors.

Following the release of the Working Group’s recommendations, an independent report by Dr Ganesh Nana of Business and Economic Research Limited (BERL) found that the proposed framework for Fair Pay Agreements would fit with OECD best practice and ‘holds no fears for New Zealanders’ in terms of economic effects.² The wide-reaching literature review also showed that a return to a modern form of sector bargaining will significantly improve the wellbeing of working New Zealanders, while maintaining economic growth.

DESIGNING A FAIR PAY AGREEMENT SYSTEM

The Working Group’s recommendations begin by suggesting that Fair Pay Agreements would be most likely to ‘gain real traction’ where:

- they are focused on problems which are broadly based in the industry or sector,
- there are real opportunities for both employers and workers to gain from the process,
- parties are well represented, and
- agreements are connected to the fundamentals of the employment relationship: the exchange of labour and incentives to invest in workplace productivity-enhancing measures such as skills and technology.

To meet these conditions, the Working Group recommended that negotiations should go beyond a narrow focus on pay rates and include issues such as hours, conditions of work, training and skills development as key features of agreements.

STARTING NEGOTIATIONS FOR A FAIR PAY AGREEMENT

The Working Group recommended that bargaining for Fair Pay Agreements should be initiated by working people and their unions, either by showing support from a significant number of working people, or by meeting a public interest test.

The Working Group recommended that a union could initiate negotiation of a Fair Pay Agreement by showing either:

- o support from at least 1000 workers (or 10% of workers in an industry if that is fewer than 1000), or
- o a public interest to address 'harmful labour market conditions,' such as in industries with ongoing labour shortages combined with low pay.

Working people are clear that the only purpose of initiation tests must be to check there is support for a Fair Pay Agreement.

COVERAGE OF ALL EMPLOYERS

The Working Group recommended that, 'All employers in the defined sector or occupation should, as a default, be covered by the agreement.' Working people and their unions agree with this. While the Working Group goes on to recommend 'limited flexibility for exemptions from the agreement in some circumstances,' working people are clear that this should only be used in rare cases and temporarily, such as when a business can prove to an independent authority that they are in severe financial difficulty. Any exemptions in a given agreement would need to be negotiated in, and agreed to by all parties during, the bargaining process.

COVERAGE OF ALL WORKING PEOPLE

The Working Group recommended that Fair Pay Agreements should cover everyone who works in an industry and/or sector, including contractors.

The recommendations of the Working Group state that: 'It is important for agreements to cover all workers – not just employees – to avoid perverse incentives to define work outside of employment regulation.' This is why working people and their unions are calling on the Government to make sure that Fair Pay Agreements cover everyone working in an industry and/or sector equally and leave no one out.

CONCLUDING NEGOTIATIONS

The Working Group recommended that when representatives of employers and working people have successfully negotiated a Fair Pay Agreement, the agreement should be approved by a majority of all employers in the industry or sector and a majority of the workers. If the negotiations have broken down and gone to an independent assessment process for a decision, then this decision would be final.

Filling in the Details

The final report of the Working Group left some issues to be decided by Government. One of these is the exact composition of the independent decision making body that will decide disputes over initiation, coverage, representation, and conclusion of Fair Pay Agreements. The Working Group recommended that the responsible body would need to have statutory independence, in a form such as a Commission, and that it must be a 'costs free jurisdiction.' The oversight of Fair Pay Agreements could be added to the jurisdiction of the Employment Relations Authority (ERA), which already has the required expertise in employment law. Whatever option the Government decides, the responsible authority will need significant expertise and resources, as well as statutory independence.

Legislation establishing the framework for Fair Pay Agreements will also need to define in greater detail the criteria of the public interest test for initiating negotiations. The Working Group report suggested that government could consider the following criteria for a public interest test:

- historical lack of access to collective bargaining,
- high proportion of temporary and precarious work,
- poor compliance with minimum standards,
- high fragmentation and contracting out rates,
- poor health and safety records,
- migrant exploitation,
- lack of career progression,
- occupations where a high proportion of workers suffer 'unjust' conditions and have poor information about their rights or low ability to bargain for better conditions, and
- occupations with a high potential for disruption by automation.

Good Fair Pay Agreement law will need to clearly and narrowly define the grounds where employers could apply for a temporary exemption from the terms of a Fair Pay Agreement. Any exemptions as defined by legislation will still need to be agreed upon to come into force via the bargaining process.

Such exemptions should require a high threshold of proof, and apply for a limited time period, e.g. a maximum period of 12 months. It could be agreed in bargaining that there is an application process to an independent authority to award any exemptions.

The legislation should also establish a fund to support the costs of bargaining for representatives of both employers and workers.

Endnotes

- 1 Terms of Reference of the Fair Pay Agreement Working Group. <https://www.mbie.govt.nz/assets/695e21c9c3/working-group-report.pdf>, p51.
- 2 Ganesh Nana. 2019. Sector wage bargaining – a literature review. BERL. <http://www.union.org.nz/wp-content/uploads/2019/06/Sector-wage-bargaining-Pipiri-2019.pdf>