Submission by

BusinessNZ

GROWING PROSPERITY AND POTENTIAL

to the

Ministry of Business Innovation and Employment

on the

Designing a Fair Pay Agreements System Discussion Paper

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INTRODUCTION

1. The Fair Pay Agreements Working Group (FPAWG) delivered its report to the Government in December 2018. Its recommendations were couched in terms of preventing a "race to the bottom" in relation to wage and conditions of employment in highly competitive industries e.g., cleaning, security and food retail. The report has since been widely criticised for proposing an approach in which Fair Pay Agreements (FPAs) are a generic response to something that is not a generic problem, i.e. a "one size fits all" solution to a diverse set of issues.

2. The fact that the Discussion Paper's authors see the need to ask such an extensive array of questions of itself indicates the uncertainties associated with the Fair Pay Agreements proposal and the problems such a system, if introduced, would inevitably generate.

3. Responses to the Discussion Paper are intended to better inform the Government of the issues that will need to be addressed if FPAs are to be effective. However, BusinessNZ has identified a wide range of concerning issues arising from the FPAWG report and Discussion Paper. These lead to the conclusion that FPAs will not deliver the expected benefits, and that they should not be introduced at all.

4. BusinessNZ therefore opposes the introduction of FPAs on the grounds that they are unnecessary, will not achieve their stated objectives and would be inconsistent with New Zealand's obligations under international labour law.

5. Another general consideration is that the costs of both introducing and then operating FPAs are clearly very significant. Given that even the FPAWG report acknowledges uncertainty as to the economic value of FPAs [1], serious consideration should be given to the *very significant costs* of introducing FPAs then almost certainly removing them again on an inevitable eventual change of government.

GENERAL COMMENTS

Complexity

1. The issues identified by the FPAWG report and the Discussion Paper point to a system of enormous complexity. Below is a non-exhaustive list of issues all participants in FPA bargaining will need to grapple with.
   - Initiation criteria
   - Threshold criteria
   - Notification
   - Coverage (sector, industry, occupation or sub occupation; regional or national?)

[1] The New Zealand Initiative's report Fair Pay Agreements: A Work in Progress provides more in depth and very compelling evidence that FPAs have little if any value to improving economic productivity.

- Exemptions
- Good faith criteria
- Scope of FPAs (i.e. what they can cover)
- Representation, including of those people and organisations not members of representative bodies
- Bargaining costs and cost recovery
- Support and resource requirements
- Anticompetitive behaviour
- Disputes
- Arbitration
- Appeals
- Ratification
- Enactment
- Enforcement

2. Coverage alone will create many issues as evidenced by the demarcation disputes that occurred under the award system in place prior to 1991. For instance, is an employee employed by a supermarket to drop off goods ordered online a driver or a retail worker? Is an ambulance officer a driver or a paramedic? Issues such as these have taken years to resolve in Australia, which already has an award-based system.

3. Asking businesses and employees to engage in a system with so many "moving parts" is unlikely to produce efficient and fair outcomes, certainly in the short term and probably not at all. Almost by definition, becoming familiar with the new system will make the first attempts slow, ultimately delaying any results and possibly making them less economic as time goes on without a settlement.

There is no evidence of a national appetite for FPAs

4. The Discussion Paper report notes that the law already provides for multi-employer collective agreements. However, there are very few of these and almost all are in the state sector (teachers, doctors and nurses). Anecdotal evidence is that there is no wider interest, in the private sector at least. Neither the FPAWG report nor the Discussion Paper analyse why this should be so.

5. Lack of evidence supporting a need or desire was flagged by the Treasury when commenting on the Cabinet Paper proposing the establishment of the FPAWG and its proposed terms of reference. It said in part:

> *"The paper does not, however, identify empirical evidence indicating that imbalances in bargaining power are causing the highlighted wages and productivity concerns.*
>
> *Nor does the paper make a strong case that a system of industry- or occupation-level bargaining would be the most effective policy response to address these concerns……the paper does not refer to an evidence base for these potential impacts. Initial work by officials from the Ministry of Business, Innovation and Employment (MBIE) has not identified an occupation or*

industry in which the proposed system would address the highlighted wage and productivity concerns.

6. The FPAWG report was produced despite this lack of evidence, and the Discussion Paper itself is posing questions designed in part to address that lack of evidence. It might be argued that Fair Pay Agreements are a solution looking for a problem.

FPAs are inconsistent with New Zealand's international legal obligations

7. The FPAWG report recommended that "the Government seek advice on the compatibility of the [proposed] system with New Zealand's international obligations," acknowledging employer concerns that the proposed approach would in fact be inconsistent with those obligations.

8. It is Business NZ's view that the FPA recommendations, if enacted, would constitute a clear breach of the Right to Organise and Collective Bargaining Convention 1949 (C98), to which New Zealand is bound, and which requires bargaining systems to be consistent with the principle of free and voluntary negotiation. The process recommended by the FPAWG is neither free nor voluntary. The compulsory arbitration mechanisms proposed by the FPAWG report also breach C98.

9. For instance, in relation to a requirement to agree to a collective agreement, the International Labour Organisation's Committee on Freedom of Association ("CFA") has found that:

> *1319. A legislative provision that would oblige a party to conclude a contract with another party would be contrary to the principle of free and voluntary negotiations",*[2]

10. The CFA has made equally clear its disapproval of the notion of compulsory arbitration.[3]

> *1416. Provisions which establish that, failing agreement between the parties, the points at issue in collective bargaining must be settled by the arbitration of the authority are not in conformity with the principle of voluntary negotiation contained in Article 4 of Convention No. 98.*
>
> *1417. Recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is permissible only in the context of essential services in the strict sense of the term (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).*

11. Nor is the process recommended by the FPAWG consistent with the idea of "extension" practised in some European countries. This concept holds that

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[2] See Chapter 15 paragraphs 1313 – 1321 of the Compilation of Decisions of the Committee on Freedom of Association for more http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70001:0::NO:::

[3] Paragraphs 1415 – 1419 (Compulsory Arbitration) of the *("CFA Compilation")* set out the CFA's views on the issue of the authorities fixing the terms of a collective agreement.

where a certain proportion of workers and employers who are already bound by a single collective agreement agree, that collective can be "extended" to cover the whole relevant industry of sector, whether the remaining employers and employees agree or not. This idea is analogous to having employers and employees covered by an existing MECA, say in the cleaning sector, agree to that collective agreement extending to cover all other workers in that sector without those other workers having a say.

12. Extension bargaining is the model practised in France and Belgium, both of whom are making strenuous efforts to move away from the approach due to its productivity stifling results. Indeed, the EU countries that were forced to introduce the most severe "austerity measures" were mostly those with industrial regimes built on extension bargaining. Italy, Greece and Spain are notable examples. They like France are currently grappling with the need to open up labour market regulation, and for the same reasons.

13. Nor is it valid to argue that FPAs are not true extension bargaining because they would be built from the start and not from an existing collective agreement, with "*every affected firm or worker having the opportunity to be represented in bargaining and to indicate whether they wish to ratify the resulting agreement*".[4]

14. While this is theoretically possible, the FPAWG report pragmatically acknowledges that not all workers and employers will have a real opportunity to be represented, by requiring those at the bargaining table to act in good faith in relation to those not formally represented.[5] The reality of this requirement is impossible to escape. Less than 10% of private sector workers are represented by unions. A similarly low percentage of employers belong to industry associations and even fewer belong to employers' associations. This makes it much more likely that FPAs will follow the extension bargaining approach now being strongly rejected in Europe.

15. As mentioned above the principle of free and voluntary negotiation underpins New Zealand's international treaty obligations.

16. The broad principle of voluntary collective bargaining arguably also covers the circumstances of workers and employers who, being remote from the bargaining process, can have no direct influence on its outcomes yet are forced by default into the coverage of an agreement they may not agree with. The Government has already been challenged on this point, as the introduction of a duty to conclude a collective agreement in the recently passed Employment Relations Amendment Act offends the same international treaty.

17. Furthermore, New Zealand only ratified C98 in 2003, after the award system had been abolished. It had been deemed inappropriate to ratify it while the

[4] Taken from "New Zealand's International Obligations", an advisory document prepared on 30 October 2018 by the MBIE secretariat of the FPAWG.

[5] FPAWG Recommendations 19, "All employers in the defined sector or occupation should, as a default, be covered by the agreement; and 27, Representative bodies must represent non-members in good faith"

award system was in operation as awards were compulsory. The FPAWG has been remiss in not resolving concerns over this point before making its recommendations. The Discussion paper is similarly remiss in not addressing the point. Quite simply, if something is unlawful it should not proceed,

18. Until there is clarity around the legal status of the FPAWG's recommendations all consideration of the FPAWG report and responses to the Discussion Paper should be regarded as purely academic

Complying with Good Faith obligations will be nearly impossible

19. Good faith obligations were introduced in 2000, a decade after the demise of national awards and in a prevalent environment of collective bargaining at enterprise level. These obligations apply to employers, *employees* and unions in an employment relationship.

20. The duty of good faith is wider in scope than the long-standing common law mutual obligations of trust and confidence.

21. The primary elements of good faith require parties to an employment relationship:

    a. not to do anything, whether directly or indirectly, that will, or is likely to, mislead or deceive each other, and be

    b. active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.

22. The duty of good faith applies to bargaining for an employment agreement, consultation over matters affecting employees and making employees redundant.

23. Good faith obligations require an employer who is proposing to make a decision that will affect employees to provide them with access to relevant information and an opportunity to comment on the information before the decision is made.

24. But, in the context of FPAs, the obligations will be almost impossible to comply with, particularly those relating to communication with employees about matters affecting them. That is because there is no infrastructure to support national level communication with employees whose employers are not connected to industry bodies or employer associations. And the fact that FPAs are intended to cover workers, a much broader category than employee, means the problems will be amplified severalfold.

25. The only effective means of avoiding this conflict with the present good faith obligations is to water them down by allowing indirect or no communication with some workers. However, this would not be good faith, and should not even be considered, leaving the probability that FPAs will place employers in an impossible situation.

26. Overall, the FPAWG failed to note that the present good faith obligations, which did not exist prior to 1991, could not be complied with in relation to its recommendation to introduce FPAs covering all workers in a specified industry or occupation.

The FPAWG report promotes equality over productivity and growth

27. The FPAWG report recognises that while sector and industry-based approaches to collective bargaining may assist in reducing inequality, they are less effective in terms of economic productivity, growth and prosperity. For example;

> *"The difference in wages found by the OECD may also signal higher productivity in companies with enterprise level bargaining than those in a context with a high degree of centralised bargaining"* [6]

and

> *"the evidence in the research literature suggests wages tend to be less aligned with labour productivity in countries where collective bargaining institutions have a more important role."* [7]

28. However, and paradoxically, while acknowledging New Zealand's relatively poor productivity the FPAWG's recommendations appear to promote equality over productivity and growth. Although this makes little sense economically, it is consistent with the Labour Party Policy Platform (May 2017) which states:

> *"Our vision of a just society is founded on equality and fairness. Labour believes that social justice means that all people should have equal access to social, economic, cultural, political, and legal spheres regardless of wealth, gender, ethnicity, sexuality, gender identity, or social position. Labour says that no matter the circumstances of our birth, we are each accorded equal opportunity to achieve our full potential in life. We believe in more than just equal opportunities—we believe in equality of outcomes".*

29. The FPAWG report does not identify possible other options to address the "race to the bottom" argument, e.g. the targeted use of tools such as the minimum wage and improved detection and enforcement of exploitative and non-compliant practices.

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[6] FPAWG Report, page 16

[7] FPAWG Report, page 17

30. Nor does the report identify the fact that New Zealand's ever-increasing minimum wage, and strong underlying minimum employment code, is one of the most generous in the world.

31. Nor does it examine New Zealand's nearly 100 years' experience of centralised bargaining, culminating in two decades of industrial and economic disruption. Instead the report is based almost entirely around justifying the adoption of FPAs as the primary mechanism for managing employment issues.

FPAs replicate the failed system prior to 1990

32. The key features of the proposed FPA system faithfully replicate the central aspects of the national occupational award system in existence between 1894 and 1991. The main aspects are discussed below.

Industry or occupation

33. The FPAWG report recommended that FPAs take the form of industry agreements or occupationally based agreements, or both. At face value, an industry agreement would cover everyone in the industry, from chief executives, to accountants, to HR staff to operational staff.

34. However, as with the obligation to act in good faith mentioned earlier, this is patently unworkable. For a start, chief executives and accountants etc. are represented in every industry. Setting a value on them in one industry will simply distort the value of their work in other industries and disrupt the competitive labour market for such skills. This makes it much more likely that "industry" agreements will actually cover occupations (e.g. all drivers), or subsets of occupations (e.g. city bus drivers). This is exactly how the award system operated prior to 1991.

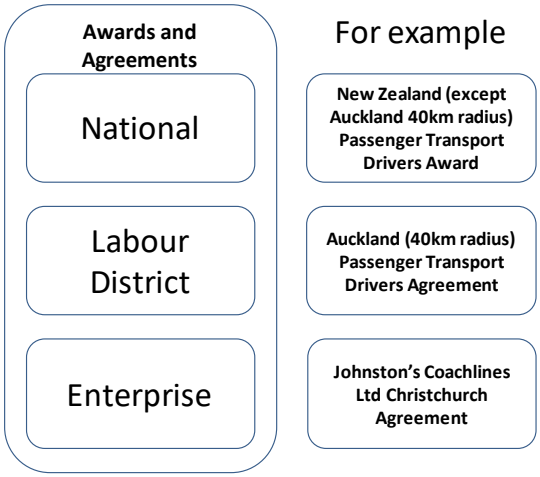
35. That said, no occupation is completely confined to one industry or sector. Nurses for instance are found in hospitals, schools and factories, and so are carpenters and electricians. Taking account of the highly variable realities between these different environments will further complicate matters. Indeed, this was the very reason that awards and agreements prior to 1991 were not all-encompassing; even in respect to a single occupation there were many documents, some national in scope, others regional (based on labour districts) and yet others focussed on single enterprises.

36. While some occupations were covered by only a few documents (Woollen Mills were covered by 15 awards and agreements), others were covered by many more. Drivers, as an occupation, were covered by nearly 200 different industrial awards and agreements; clerical workers had over 200 across national, district and enterprise levels.

37. Appendix 1 lists 3106 awards and agreements in existence just before their abolition in 1991. This is nearly double the number of collective agreements

(1988) currently registered under the present system governed by the Employment Relations Act.

38. The diagram below illustrates the basic approach.



39. Unions have indicated that the first FPAs they seek would cover cleaners, retail workers and security guards. Appendix 1 shows that each of these groups was covered by multiple documents prior to 1991, based on regional and sub occupational differences; e.g.

> Cleaners and Security guards (classified in 1990 as *Cleaners, caretakers, lift attendants and watchmen*) - 54 documents
> Retail workers (classified in 1990 as *shop attendants*) - 12 documents

40. This multiplicity of documents was developed over the nearly 100 years between 1894 and 1991 and recognised the reality that "one size fits all" documents were unworkable; local and regional differences, as well as the unique features of some jobs within the generic description could not be dealt with by generic documents. This fundamental reality appears to have been either unappreciated or ignored in the FPAWG's consideration of FPAs as a future approach to managing conditions of employment.

Coordination

41. Under the award system, unions were coordinated by the Federation of Labour and Council of State Unions (later merged into the CTU) while employer and industry associations were coordinated by the NZ Employers Federation (now BusinessNZ). The same basic model will apply under the proposed system under which it is recommended that the "social partners" (BusinessNZ and the CTU) coordinate industry bargaining representatives. The logistics historically involved in this were enormous and costly yet were not analysed by the FPAWG, nor addressed in the Discussion Paper.

42. Moreover, it will be necessary for coordination efforts to contact even those who are not members of a union or representative industry organisation. *This is most workers and employers.* Other than through public media, there are currently no reliable means available for contacting non-members of these organisations and there is no guarantee that they will respond if contacted. As mentioned earlier, these obvious difficulties in communication with affected employers and workers will make it likely that breaches of the good faith obligations of the Employment Relations Act will be unavoidable leading potentially, if not probably, to entirely unnecessary disputes and litigation.

Coverage

43. Unlike awards, FPAs will cover all workers (not just employees) in the designated occupation or industry. This will include the likes of labour hire workers and dependent contractors. Imposing an employment model on the currently commercial approaches adopted by such groups is liable to damage if not destroy, emerging global trends towards the "gig" economy, including such things as app-based work (e.g. Uber).

44. Companies such as Uber in fact provide two-way flexibility for New Zealanders to earn extra money, giving worker-partners both absolute discretion regarding when they use the app and non-exclusivity, i.e. they can work on other platforms too. Such multi-faceted opportunities are a valuable supplementary source of income for many, and accordingly the quantum and mix of hours worked from week to week can vary significantly. For example, we know in NZ that two thirds of Uber driver-partners use the app for fewer than 20 hours a week, with only 7% working a consistent mix of weekday and weekend hours.

45. This genuine flexibility enables people to fit earning around other commitments and gives them control over their lives in ways that most traditional employment opportunities do not. Such models arguably are more consistent with the increasingly appreciated need to improve worker wellbeing than are more structured employment relationships. Removing the flexibility inherent in app (and "gig") based models, as FPAs would do, will take away a potentially significant source of income for thousands of New Zealanders.

46. Failure to adapt to such trends will arguably exacerbate New Zealand's mediocre national productivity while actively opposing emerging trends will result in the accelerated destruction of value and opportunities. With respect to coverage, FPAs will be "awards on steroids".

Settlements

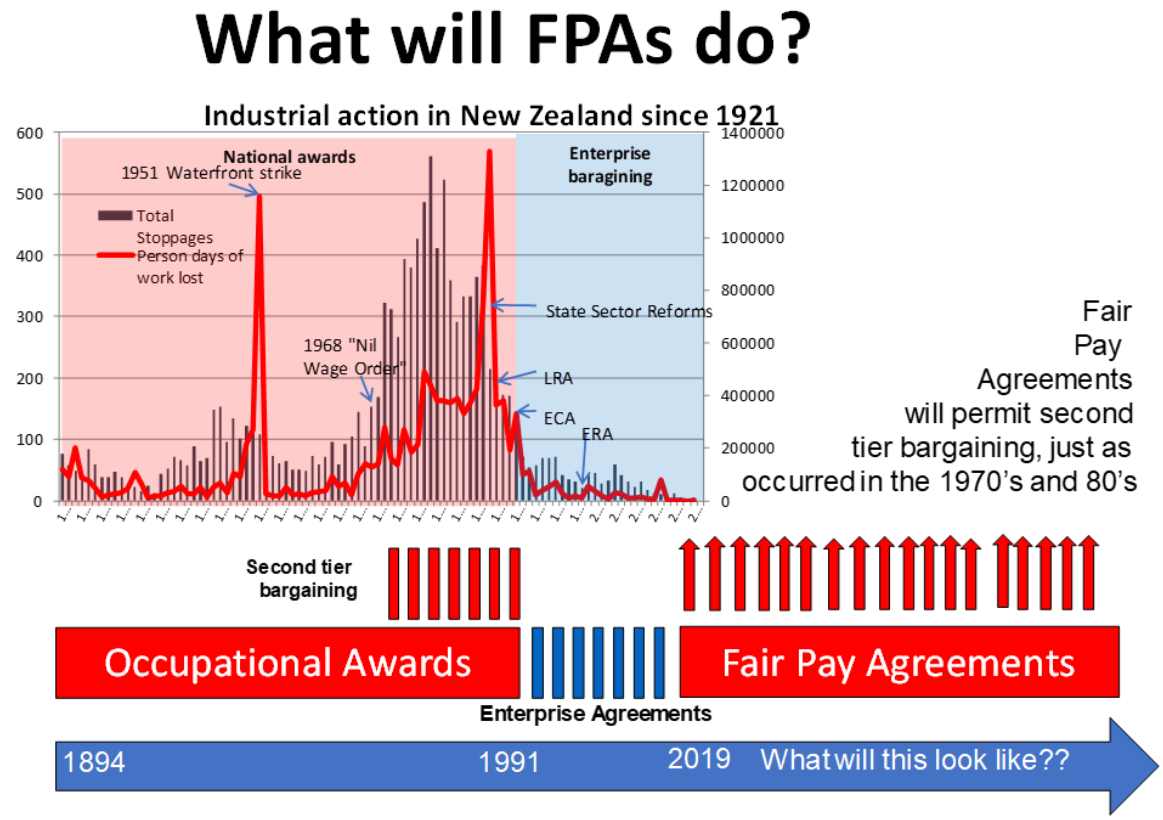
47. The FPAWG report's recommendations also contain aspects of the pre-1990 award system that make significant industrial action and economic disruption not only more likely, but almost certain.

48. Under the award system, settlements became more and more conservative to enable most businesses to cope with negotiated or arbitrated changes. Dissatisfied with low outcomes, workers and their unions put pressure on individual employers for "above award" settlements.

49. History (and reality) suggest that FPAs will need to be similarly conservative, which will create pressure for extra increases through enterprise level bargaining, thus recreating the ingredients of the disastrous industrial environment of the 1970s and 80s.

50. Under the award system strikes were prohibited with respect to bargaining for awards. However, following the infamous "nil wage order" of 1968, unions began pursuing "above award" deals outside of the prohibition against strike action. It was this second tier bargaining that gave rise to the phenomenally high level of strikes and lockouts during the 1970s and 80s (see the graph below).

51. Flying in the face of history, the proposed FPA model openly envisages "above FPA" deals being used to supplement FPAs. The diagram below illustrates the potential consequences.



52. Furthermore, if FPAs become the vehicle for significant changes to wages and conditions, it is almost certain that many smaller businesses will be consumed, leaving mainly the larger players standing.

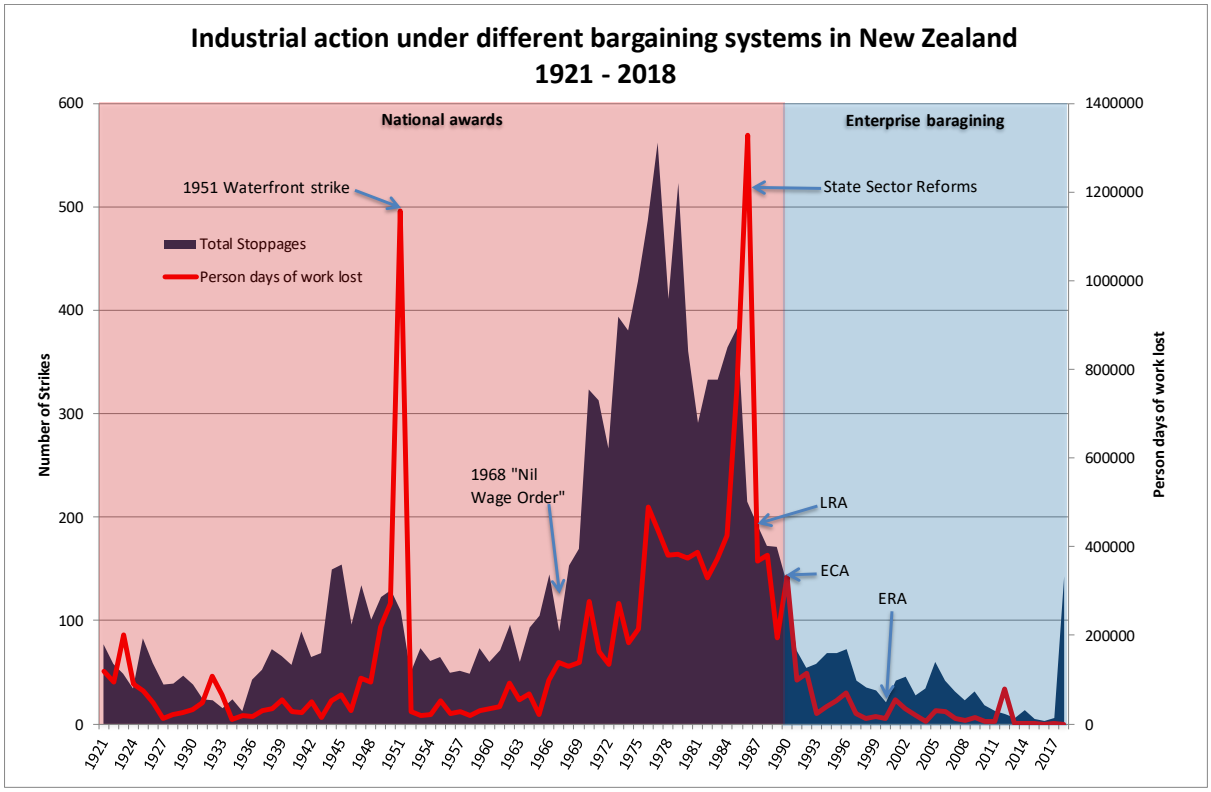
53. This would open the door to increased monopolistic behaviour by larger companies. Either way, the prospects are bleak for smaller players and their employees, particularly those in the regions.

Disputes

54. Under the award system, disputes were heard in the Arbitration Commission (and its predecessors) by a judge assisted by assessors selected by employers and unions. The FPAWG report recommends that failed mediation be referred to an independent authority, possibly the Employment Relations Authority, which may be assisted by "experts" or panels.

Strikes

55. As can be seen in the graph below, even without Fair Pay Agreements, strike action has increased significantly since 2017.



56. The most significant and economically costly activity has been in the state involving doctors, teachers and nurses, who are all on national level collective agreements (i.e. analogous to FPAs). These agreements will not be affected by the no strike rules recommended by the FPAWG as there is no proposed requirement to convert current Multi Employer Collective Agreements (MECAs) into FPAs. FPAs therefore are unlikely to reduce the strike rate in these sectors.

57. Under the award system strikes were not permitted in pursuance of a settlement, by virtue of trade unions being registered under the Industrial

Conciliation and Arbitration Act 1894 (and its successors) which, until the Labour Relations Act of 1987, bound unions to the award system.

58. From the beginning, the ability to be part of the award system was premised on unions and workers giving up the right to strike and submitting to compulsory arbitration to resolve differences.

59. This was unpopular with both unions and employers. The larger and more powerful unions disliked giving up the right to strike. For their part, employers opposed placing decisions on wages and working conditions in the hands of a judge, instead of relying on the labour market. From about 1902, the Arbitration Court became bogged down in so many cases they could take up to a year to be heard. Dissatisfaction became widespread and in 1906 "the country without strikes" saw its first strike since the Act was passed 12 years before.

60. While the FPAWG report recommends that strikes not be permitted in relation of bargaining for an FPA, it does envisage permitting strikes for *"matters which coincide with FPA bargaining."* While lacking specifics, this clearly envisages a continuation of the existing right to strike over collective bargaining for enterprise level agreements as well as appearing to open a door to strikes over non-collective bargaining issues, such as those currently occurring in France, over general concerns with the state of the economy and the government's management of it.

> **Electronics manufacturer** - *"We will be forced to go to greater levels of automation and reduce the number of employees. This will make it harder for relatively unskilled people to get jobs."* (source: Export NZ)

61. Strikes over political, economic and social issues are currently not permitted in New Zealand. The right to strike is one of, if not the most, hotly contested issues in the ILO supervisory system. Statements by the ILO's Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that *"the right to strike is an intrinsic corollary to the right to organise protected by Convention 87"* have been strongly refuted by global employers' organisations and many governments over many years.

62. Notably, in 2012 the CEACR was taken to task when, in its annual report to the International Labour Conference, it attempted to imply a general right to strike into the Freedom of Association and Right to Organise Convention 1948 (C87), despite the Convention not even mentioning strikes or industrial action, let alone making any provision for them[8].

63. Objections to the CEACR's observations from the employers' group of the ILC, and many governments, resulted in the entire supervisory system of the ILO being brought to a halt that year. Consideration of cases resumed the following year only after months of negotiations over the role and mandate of the CEACR.

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[8] https://www.businessnz.org.nz/__data/assets/pdf_file/0009/178533/190918-The-Right-to-Strike-2019-Law-Society-article-abridged.pdf

64. New Zealand is bound to the principles of C87 by both its membership of the ILO and by section 3 of the Employment Relations Act 2000[9].

65. Permitting strikes over non-workplace related issues would be a direct breach of the principles of the ILO Freedom of Association and Right to Organise Convention 1948 (C87).

Relativity issues will drive up prices

66. Under the award system, awards were negotiated in a strict hierarchy based on "fair relativity"; settlements were reflective of the perceived historical relationship between one award and another.

67. The private sector Metal Trades Award traditionally set the scene for all other trades occupations. Settlements would not disturb the overall wage relativity between awards. In the state sector, secondary school teachers headed a long chain of relativities that ended with school audiologists. Considerable care was taken to ensure that settlements did not disturb the overall wage relativity between awards.

68. Occupational relativities disappeared as the basis for wage setting upon the introduction of the Employment Contracts Act in 1991, and awards as such vanished. However, the FPAWG recommendations would reinstate the concept of fair relativity, because an FPA for truck drivers will not escape comparison with similar agreements for bus drivers or train drivers; agreements for retail workers will be compared with those for bank tellers and so on.

69. History suggests that once the first FPA is settled, other occupations will formulate claims based on the perceived value of the precedential FPA. Unchecked, this will promote wage inflation and spiraling prices.

70. Industrial pressure played a large part in driving the Muldoon government to introduce price controls in the early 1980s and caused the near collapse of the economy in 1983, when the "wage freeze" was lifted and wage claims spiralled out of control. Mortgage interest rates and food prices spiked and created enormous pressure on workers and employers alike.

71. Nowhere in its report does the FPAWG deal with the critical issue of relativities although it does recognise that the advent of pay equity claims under the forthcoming Equal Pay Amendment Bill will add a new dimension, as pay equity settlements will recalibrate historical relativities between classes of work.

72. For instance, a female dominated group that achieves a pay increase as a result of being compared with a male dominated group doing work of equal value will in future be "pegged" to that male dominated group.

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[9] *"The object of this Act is to - (b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively."*

73. The proposed new pay equity legislation requires that claimant group wages be kept in line with the comparator group once a pay equity settlement is achieved. If the comparator group's wages are subsequently adjusted by an FPA settlement, the pay equity claimant group's wages will have to be similarly adjusted even though they are not covered by an FPA.

74. FPA settlements therefore may cause relativity "ripples" to flow into sectors, industries and occupations not covered by FPAs, causing relativity issues in those areas, and putting pressure on employers and their businesses to respond to stimuli they cannot control

FPAs will disenfranchise unions

75. Under the award system, demarcation disputes between unions were common due to strict rules about which unions covered which work. At times these disputes caused as much disruption as strikes over collective bargaining.

76. The FPAWG's recommendations would enable unions (on behalf of workers) to nominate the coverage of a proposed FPA. Over time, this will almost certainly create tensions between the boundaries of FPA coverage and the unions that negotiate them, recreating demarcation as an issue.

77. There are currently around 135 unions in New Zealand. Tensions already exist between many of the fewer than 30 unions that are affiliated to the NZ Council of Trade Unions and the more than 100 unions that are not; the Resident Doctors Association is a notable example, as evidenced by media attacks from the CTU[10].

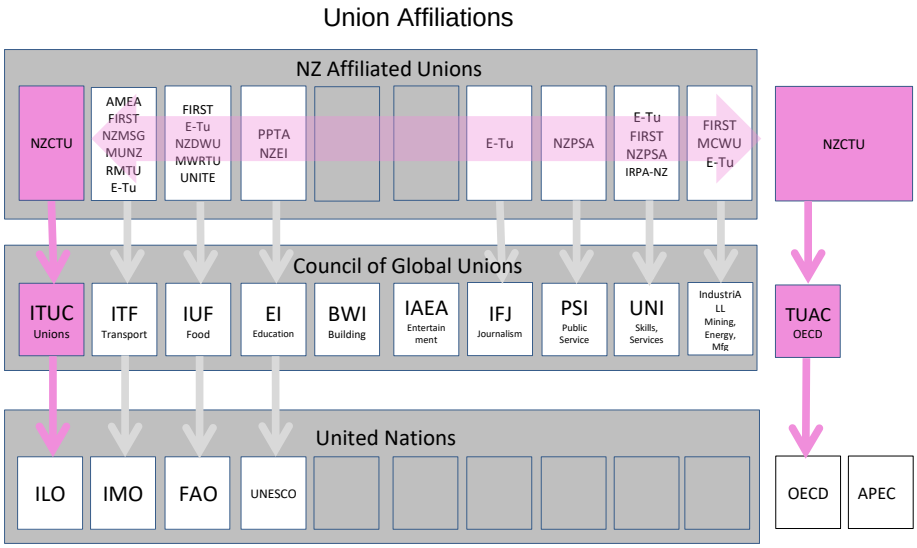
78. Opportunistic claims for FPAs by CTU affiliates could easily force non-affiliated domestic unions into a corner, particularly those that are currently associated with a single employer. There are many of these in New Zealand, in private schools, local government, ports and private sector companies. These so called "yellow dog" unions are traditionally disavowed by internationally affiliated unions.

79. As an example, a union that is not represented in all ports, but which has enough members to initiate an FPA, can effectively "take over" the conditions of the ports in which they do not currently have a presence. This could easily disenfranchise other unions currently present, and lead to levels of internecine union conflict not present since before the 1990s. It may also affect the constructive relationships currently in place between many employers and their local union by replacing those unions with more militant nationally oriented ones.

80. As can be seen in the diagram below, several of the CTU's major New Zealand union affiliates are strongly linked to the international union movement, and

[10] https://www.stuff.co.nz/national/politics/109799092/as-junior-doctors-strike-leaked-email-shows-bitter-rivalry-between-unions

thence into the United Nations and OECD. Affiliated unions enjoy strong support in these bodies.



81. To further illustrate this point, the Public Service Association is one of 30 unions currently registered as covering Government Administration and Defence[11]. It is the only one of that group affiliated to the CTU and to its global counterpart, Public Service International. It is New Zealand's largest union with over 50,000 members. It therefore is easily capable of meeting the 1000-person or 10% threshold for triggering a claim for, say, clerical workers.

82. Doing so, however, could disenfranchise the remaining 29 public sector unions with respect to clerical workers. It would have a similar effect on private sector unions that currently cover clerical workers. This effect could be repeated for all occupations covered by the PSA.

83. Similar effects could be read into the coverage of the FIRST Union which is registered as covering Transport and Storage; Accommodation, Cafes and Restaurants; Cultural and Recreational Services; Construction, Finance and Insurance and Property and Business Services (the widest registered coverage of all New Zealand unions).

84. At the very least, the proposed system is likely to lead to demarcation style disputes between unions, something not possible under the present system.

FPAs are a recipe for economic decline

85. Increased productivity in economic terms requires an increase in the *value* of the productive economy, not simply more output. In these terms, the FPAWG report is a recipe for economic decline, in both pure economic terms and in the circumstances of the average worker and employer. There are several reasons for this view.

[11] http://www.societies.govt.nz/cms/registered-unions/register-of-unions

86. First, history suggests that wage gains for workers via FPAs will be constrained by a realistic need to ensure that increases are sustainable for as many businesses as possible.

87. History also suggests that this will increase pressure for enterprise level "top ups", which in turn will increase the incidence of industrial action (depriving workers of incomes and employers of production).

> **Food manufacturer** - *"We may need to look at automation to stay competitive. This wouldn't be ideal for us, because automation would undermine our key point of difference, which is producing handcrafted goods. This would also take time due to the fact we have already invested in a brand-new manufacturing plant, and the additional capital required to automate further would be a stretch on top of the significant investment we have already made."* (source: Export NZ)

88. History therefore suggests that FPAs will do little or nothing to improve productivity. Instead they will reduce it. Illustrating this point, unions have been pushing for shorter working weeks for decades[12]. In simple terms, this equates to "more money and less pressure". However, this merely adds cost for employers and reduces the availability of employees.

89. By definition, higher wages and shorter, more flexible, "family friendly" hours do not of themselves add up to improved productivity. In these circumstances, rather, improved productivity will likely drive employers to seek smarter work practices (with fewer employees) and increased investment in technology (also with fewer employees). This was also recognised by the FPAWG which said:

> *"we note raising wage floors may make capital investment more attractive for firms; that is, it may speed up employer decisions to replace some jobs with automation."*

90. When it came to increasing productivity, however, the FPAWG took an overly simplistic view, saying that collective bargaining:

> *"would have the potential to increase aggregate productivity by setting higher wage floors and better conditions; forcing unproductive firms to exit; and lifting overall productivity of the sector."*

91. In other words, the FPAWG felt that productivity could be improved by compelling payment of higher wages thus forcing weaker firms out of business while the strongest (usually also the biggest) survive. This is economically illiterate. Weaker firms are not weak just because they are not efficient. More often they are weak because they lack scale or are in a vulnerable stage of an otherwise successful development.

92. Smaller firms are often relatively more innovative than their larger counterparts, whereas monopolies often "rest on their laurels". Being essentially anti-competitive, they can simply charge (and pay) more.

[12] https://www.stuff.co.nz/business/110814060/worklife-balance-an-issue-thats-time-has-come

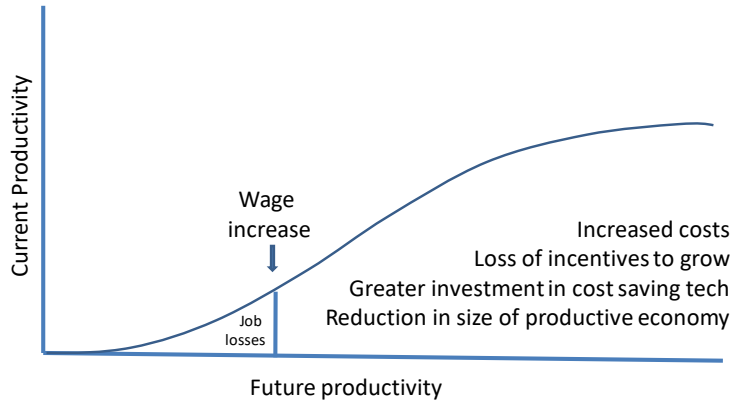
93. A likely early effect of this is an increase in stronger firms developing monopolistic strategies to consolidate their position. While this may reduce competition that leads to a "race to the bottom", it paradoxically also strengthens the ability of the stronger firms to dictate terms, including lower wages.

> **Electronics manufacturer** - *"I think after the wages increases go through, it will be cheaper to manufacture in Australia and our competitive advantage in New Zealand will be gone. This is the first*

94. Irrespective of which outcome emerges, nowhere in the world does reducing competition result in improved productivity or sustainable economic growth. And while the result of the FPAWG's thinking may improve productivity *statistics* on a per business basis, it does nothing for the workers who lose their jobs or for the size of the economy. Ultimately, while (according to the FPAWG report) FPAs may reduce wage-based competition, they will not improve the ability of an employer to pay the increased cost, unless that employer can commensurately improve productivity. Nor should it be forgotten that, while New Zealand's productivity was at a notably high level during the 1980s so also was the level of unemployment.

95. Wages are paid for by the productive value of workers' work. Imposing increased costs beyond the value produced by workers incentivises or even necessitates employers to restructure costs and/or take on debt, at least in the short term. In such circumstances, a focus on increased productivity is usually delayed while the employer comes to grips with the immediate demands of retaining the viability of the business. Worker layoffs are also an all too common by-product of such exercises. The graph below illustrates this effect.

The price of imposed increases



96. Overseas experience, for instance in the UK, suggests that rises in the minimum wage correlate with increases in unemployment for young people and minority groups.

97. For other low paid jobs, raising wages through FPAs or any other means may have no effect at all, as the lowest paid jobs usually remain sufficiently unattractive that only those with no other alternative are likely to compete for them. Migrant workers are increasingly filling these roles, ultimately reducing

the number of jobs available for New Zealanders who might seek to enter the workforce at some future date.

98. Furthermore, increasing low pay levels eventually forces up all pay rates and this can have unintended consequences. Employees in jobs requiring a high level of skill and knowledge rightly expect a higher rate of pay than a worker in a job requiring little skill and/or knowledge. Pressure on wage levels above the minimum wage adds to inflationary pressures, ultimately resulting in increased costs and interest rates, both of which ironically impact most on the lowest paid.

99. It has been observed that *as the minimum wage rate rises so too does the number of people paid the minimum wage*. At its present level (58% of the average wage and 69% of the median wage) the minimum wage now influences wage levels generally, particularly those covered by collective bargaining. This is more marked in sectors with relatively higher proportions of the lowest paid workers (e.g., hospitality and retail).

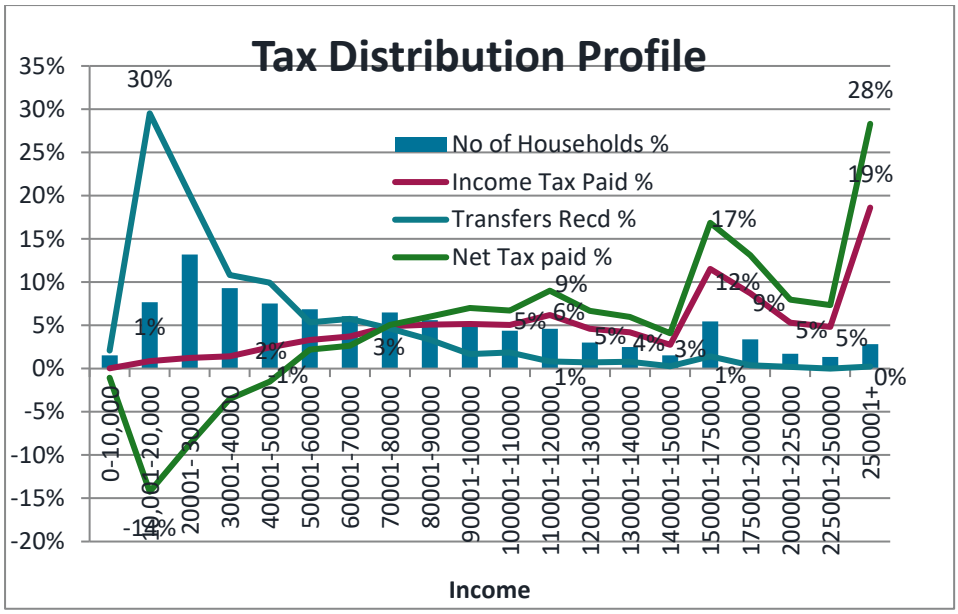
100. Ultimately, unless all the effects are managed, *simply increasing the minimum wage can marginalise the very people the increase is designed to assist, low paid New Zealanders*.

101. FPAs arguably will accelerate these effects.

Workers will not get the full benefits of increases

102. An unfortunate by-product of arbitrary wage increases (whether achieved via FPAs or by other means) is that they are likely to be diminished by the application of abatement criteria attached to government subsidies such as Working for Families, meaning many workers will not reap the full benefit.

103. While this occurs now, it will be exacerbated by FPAs. Since settlements will be imposed generally upon all workers and employers, there will be little ability to ameliorate the abatement effects of pay increases with workarounds, such as by providing individuals with improved non-monetary benefits. Any such workarounds will simply add further cost, further hurting productivity.



Source: NZ Treasury

104. As shown in the graph above, low income earners are the greatest recipients of income subsidies and thus the group paying the lowest (in some cases negative) net tax. They therefore are the group that will reap the lowest net gains from pay increases, because pay increases will be offset against the level of subsidy they receive.

105. Ultimately, introducing FPAs without addressing these issues may simply put more money in government coffers than it will in workers' pay packets.

Government will not be able to control the rate of introduction

106. While the Prime Minister has offered assurances that there will only be one or two FPAs in the first year, the report provides no means for the Government to control this. This makes it quite possible that claims will proliferate once the requisite law is passed. The long list of occupations at the back of the report indicates just how many there could be.

107. Moreover, the report misrepresents the situation of low paid workers relative to the minimum wage. At page 14 the FPAWFG report states:

> *"We examined the demographics of those working on or near the minimum wage – under $20 per hour"*

108. The minimum wage is not $20 per hour, or anywhere near it. Currently it is $17.70 per hour, rising to $18.90 on 1 April 2020. Using a figure of $20 inflates the number of people who are "undervalued", which in turn may increase expectations that FPAs will quickly lift wages to or above this level, a level the Government has committed to reaching only by 2021. When the need for relativities to be maintained is added, the implications for labour costs and disruption are very significant.

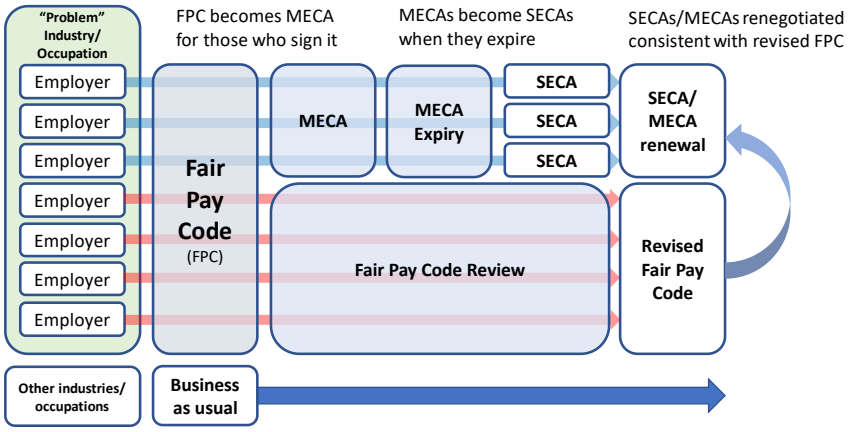
109. There are already strong signals that workers will not wait in a "queue" for their FPA to be settled. For instance, there are already over a dozen pay equity claims being bargained for in the state sector, and this is before the new Equal Pay Amendment Bill has been passed. Similarly, significantly increased levels of strike action in the transport and other sectors since the 2017 election hint at an impatience for results from workers who will not appreciate being "queued".

A voluntary approach would be better

110. BusinessNZ opposes the introduction of FPAs. However, should the Government elect to proceed with FPAs in some form, it takes the view that a voluntary approach would be at least more consistent with New Zealand's obligations under international law.

111. It needs to be recognised that the negative impacts of FPAs, as recommended by the FPAWG, stem predominantly from their compulsory and all-encompassing nature. The employer members of the FPAWG suggested an alternative to the approach taken in the FPAWG report.

112. The diagram below illustrates how a voluntary approach might work[13].



113. This approach is built on the idea that industries with clearly demonstrated undesirable labour outcomes or practices could be encouraged to develop a "code of practice" setting out an agreed view of a reasonable approach to terms and conditions of employment in that environment.

114. The resulting code could be signed up to by (and would become binding on) willing employers (effectively becoming a MECA) but used as non-binding guidance by those who choose not to sign on. Over time, those employers who sign on would generate labour market pressure on wages and conditions of those who have not signed. Such pressure should dampen, if not disincentivise, the "race to the bottom" effect commented on by the FPAWG. "Non-problematic" industries or occupations would be unaffected.

[13] MECA – Multi Employer Collective Agreement, SECA – Single Employer Collective Agreement

115. In addition, the suggested voluntary approach would revert to enterprise level agreements over time, allowing control over conditions of employment to return to the workplace level after they had been "recalibrated" by agreeing to the FPA code-based conditions. This would not prevent employers from renewing their commitment to the FPA code if they chose to.

Ends

COMMENTS ON DISCUSSION PAPER QUESTIONS

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Initiation		
Only workers (unions) can initiate bargaining for an FPA Workers/unions may nominate the sector or occupation they want an FPA to cover. The proposed boundaries of the sector or occupation may be as wide or narrow as workers see fit. **Independent authority to verify that trigger conditions are met** *Representativeness trigger* - confirm the threshold criteria are met. *Public interest trigger* - confirm the statutory conditions are met. Time limits for completing the verification process. **Either party permitted to initiate renewal of the FPA, or variation during its term.**	***When an FPA can be initiated*** 1. Do you think that either a representation or a public interest test is needed to initiate an FPA? Or do you think that applicants should need to pass both a public interest test and a representation test to initiate an FPA? If not, what would you recommend instead?	Either trigger allows a minority of workers in a sector or industry to initiate bargaining for an FPA, without any ability on the part of employers to argue. Employers will not be able to opt out if the proposed FPA covers them. Since workers can only be represented by unions (see Bargaining Parties phase below), this effectively means unions can initiate bargaining in any sector or industry, whether they have members in these or not. For all practical purposes, once an FPA is created, unions will control the dialogue over working conditions under the FPA. This is a classic tail wags the dog scenario and is the same scenario that several European countries e.g. France are trying hard to get away from after many decades of constant industrial unrest and poor economic performance. While the representativeness trigger is relatively straightforward, decisions over public interest are complex, even with guiding criteria. Essentially, judicial bodies will be making decisions over the economic prospects of an entire industry or sector. This is economically unsound at best.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Variation or renewal of an FPA are subject to the same initiation and ratification thresholds as the original one.		
Two ways to initiate an FPA *Representativeness trigger* – 10% or 1,000 (whichever is lower) of all workers (union and non-union) in the sector or occupation, as defined by the workers in the initiation process.	***The representation threshold test*** 2. Is 10% a reasonable threshold to ensure that applicants have some support from their sector or occupation before negotiating an FPA? If not, what do you think a reasonable threshold would be? 3. How should an applicant group need to prove that they have reached a representation threshold? (such as through signatures, membership etc.) 4. Do you think applicants should be able to trigger bargaining by gaining a set number of supporters? If so, what do you think an appropriate number would be? 5. Do you think that employers should be able to initiate an FPA bargaining process in their sector? 6. How should employers be counted in a representation test – by number or by proportion of the relevant employees that they employ? 7. If employers are counted by number, what do you think would be the best way to classify and count them?	The Discussion Paper does not mention that the FPAWG report recommended that the representative trigger be either 10% or 100 (whichever is lower) of all workers in the sector or occupation. Both thresholds are farcical and strike against the very notion of democracy; for instance, hundreds of thousands of clerical workers could be subjected to an outcome in which they had no objective input because 1000 of them asked for an FPA.
	The public interest test	

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Public interest trigger – specific adverse labour market conditions exist in the nominated sector or occupation. Criteria to be set in law.	8. What problems do you think an FPA is best suited to address? 9. What do you think should need to be demonstrated by an applicant group to prove that an FPA will be in the public interest? 10. What do you think of the criteria about problematic outcomes and potential for more sectoral coordination? If you disagree, please indicate which other criteria you think should be included or if a different approach would be better. 11. How much evidence should the applicants be responsible for providing, and what should need to be collected independently by the assessing authority? 12. What indicators do you think a decision maker should take into account when applying the public interest test? 13. Should the list of indicators be open, providing the decision maker flexibility to look at other factors to assess the two broad criteria? 14. Is there a particular indicator, or a group of indicators, that should be given extra weight when deciding if a sector or occupation is in need of an FPA? 15. Should the indicators be updated regularly? If so, how regularly, and by whom? 16. Do you think the decision maker should have absolute discretion to decide that the public interest has been met? If not, why	Public interest is a misleading description for an externally assessed trigger. The actual purpose of the trigger is to circumvent an inability to establish an FPA via representative means. As such it becomes a device permitting self-interested parties to initiate the process of establishing an FPA in an occupation they feel would benefit. This could be either an existing body such as the Employment Relations Authority. Furthermore, it presupposes that the arbitrator is expert in assessing the criteria established for the purpose. This is not a skill set of the current Employment Relations Authority, nor are these skills readily apparent in New Zealand at present. This makes it probable that (especially early) decisions would be less than credible and would therefore almost certainly be challenged. The indicators suggested in the Discussion Paper create a paradox given that the apparent assumption that wages are not matching productivity does not align with the other main thrust of the FPAWG report and the Discussion Paper, that productivity is low. This paradox begs questions like • *Exploitation* – if this already occurs under extensive existing protections what is it about an FPA will that make the slightest difference? • *Coordination* – workers in a given occupation are spread across many employers and even different industries; how is it possible to fit their different circumstances to the suggested set of criteria.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
	not? What do you think the threshold should be? 17. Do you think the public interest test should be available on-demand to anyone, or should a list of allowed sectors or occupations be set in law? 18. If the sectors and occupations able to bargain for an FPA are pre-selected in law, which sectors and occupations do you think we should assess against the test first? Are there any that should not be selected? Why? 19. If a pre-selected list of sectors and occupations was re-evaluated periodically, how often do you think this should be done?	• *Labour costs* -if labour costs are already a high proportion of total costs (as is the case in labour intensive industries and sectors) what will be the likely effect of driving them higher still? The Discussion Paper also makes unsubstantiated assertions about lack of training, failure to comply with minimum standards and the like. The idea of "pre-approved" sectors is an extension of existing provisions which govern cleaning and catering services in all sectors as well as caretaking, laundry and orderly services in the education, health and aged care sectors (Part 6A of the Employment Relations Act). These provisions were enacted in part to prevent the "race to the bottom" alleged to occur when contracts for this work are renegotiated. The same rationale has been used for introducing FPAs, yet no reference to the existing use of "pre-approved" sectors has been made in the FPAWG report or Discussion Papers. It is suggested that any consideration of "pre-approved" sectors would benefit considerably from an analysis of the effectiveness of Part 6A.
Notification requirements Minimum criteria will be set to ensure all affected employers and workers are notified of the initiation of an FPA and have an opportunity to be represented and informed throughout the bargaining progress.	***Notifying affected employers and employees*** 20. Do you think that the government, employers, employer organisations and unions should all play a role in notifying people that FPA bargaining has been initiated? 21. Do you think that employers should have responsibility for informing employees that an FPA has been initiated? Why or why not? If not, who do you think should do this instead?	Notification is a significant logistical exercise and will require extensive consultative mechanisms to be set up nationally and by each industry representative body. This will need to include reaching out to organisations that are not members of a representative body (the vast majority), to ensure they have a chance to participate While this will be relatively straightforward for unions that operate such mechanisms now, no comparable infrastructure exists for employers. This will require the recreation of mechanisms that operated before the abolition of national awards in 1991.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
		Reluctance on the part of those who do not wish to be covered by an FPA may also lead to "gaming" caused by "delays" in expediting notification, leading to disputes about good faith and employer appeals about the applicability of a proposed FPA to their enterprise.
Coverage		
Occupation or sector to be defined by the parties Workers initiating the bargaining process must propose intended boundaries of the sector or occupation to be covered by the agreement. Actual coverage to be agreed between the parties, including providing for variations in terms for geographic regions. **FPAs to cover all workers (not just employees) and all employers in sector/industry or occupation** Coverage to extend to any new employers or workers after the FPA has been signed. Employers able to apply to an independent authority for a declaration of whether their business	***Defining and renegotiating coverage*** 22.Do you think that applicants should need to define the coverage of their proposed FPA in terms of the occupations and sectors concerned? 23. Do you have any comments on the use of ANZSCO and ANZSIC to define coverage? Do you think that there are better alternatives? 24. Do you think that parties should be able to bargain different coverage, with any significant changes needing to pass the initiation tests? If so, should there be any restrictions to prevent the test being used to delay an FPA? 25. Should there be restrictions on the permissible grounds for changing coverage during bargaining? If so, what should they be?	Requiring the cited parties to an intended FPA to agree its coverage opens the historical Pandora's Box of demarcation. Different industries and occupations have many points of overlap. Creating documents that overlap creates multiple points of dispute over which FPA takes precedence. Disputes over such matters were a significant cause of disruption prior to 1991 and are likely to be so again. Historical disputes often also occurred over the definition of coverage of work. For instance, is a supermarket employee who delivers online orders to customers a retail worker or a driver? In Australia, such disputes have been tied up in the courts for years at a time. It should be noted that even the pre 1991 award system recognised that over a specified wage/salary level or level of responsibility award coverage was inappropriate. Awards did not apply to "all workers in a sector/industry"; coverage was generally confined to specific occupations, even then giving rise to arguments about what jobs (and job titles) were covered.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
falls within the proposed/agreed coverage.		
Enterprise level agreements Enterprise level collective agreements may be agreed even when there is an applicable FPA but these must equal or exceed the terms of the relevant FPA. Additional provisions not within the scope of the FPA may also be agreed.		While the FPAWG report recommended that strikes and lockouts not be permitted with respect to bargaining for FPAs specifically clarified that this prohibition would not extend to matters outside that bargaining. This effectively means that industrial action over "above award" enterprise level bargaining, such as occurred under the awards system in the 1970s and 80s, will be permitted. See Appendix 1 for a graphical depiction of what this might mean.
Time limits for negotiation of FPAs Timelines will be fixed for the initiation of FPAs and the subsequent bargaining process.		Given that collective bargaining agreements can take time to achieve, any attempt to make FPA bargaining time bound would seem doomed to failure as well as providing significant opportunities for "gaming", always a fertile ground for disputes Either that, or the agreement won't satisfy any party (and probably won't anyway as FPAs involve third parties determining what will apply to employers and workers not involved in the bargaining process). Any time period would also have to take account of the need for a settlement to be ratified before it becomes an agreement.
Limited exemptions from FPAs Temporary (up to 12 months) exemptions may be permitted; e.g. for small employers, new entrants to the workforce or those returning after extended period out of the workforce.	***Exemptions*** 26. In what circumstances do you think a temporary exemption from an FPA may be warranted? 27. If included, should exemption clauses be mandatory, or permissible?	All approaches to collective bargaining should be voluntary, rendering exemptions unnecessary. Should the government proceed with a compulsory approach there are several approaches common in international treaties that could be considered. These include:

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
	28. Should the bargaining parties be allowed to negotiate additional, more specific, exemptions above those set in law? 29. What do you think is a reasonable maximum length of time that an employer should be exempted from the terms of an FPA? 30. Should an exemption be able to apply to an entire FPA, or just certain terms?	• Exempting specified categories from coverage altogether • Exempting specified categories for a specified time to permit development of compliant measures • Permitting the parties to negotiate exemptions based on prevailing and predicted circumstances (albeit that such exemptions must still normally comply with the underlying principles of the treaty in question)
FPAs may take account of regional differences within industries or occupations.	***Regional alternatives*** 31. Do you think that parties should be allowed to negotiate regional variations in the minimum terms of an FPA? 32. If they are included, what do you think a good level for regional variations could be – regions (regional councils and unitary authorities), territorial authorities (city and district councils) or something else? Should this specificity be set in law or left to the parties to decide? 33.Do you think that parties should be able to initiate bargaining towards an FPA for specific regions? What, in your view, are the risks of allowing this? 34. If regional FPAs are allowed, should parties be able to change the regional coverage during bargaining? 35. Do you think there are particular sectors or occupations which could benefit from, or be harmed by, regional FPAs?	The national awards system in existence prior to 1990 incorporated regional variations by means of Labour Districts. The attached index of awards as at 1990, illustrates the development of regional variations over more than 100 years. District awards were further broken down to enterprise level documents, as significant variations at a district level were still insufficient to recognise the realities of different industries operating in the same district. In other words, ***regional and local variations are essential to any approach to centralised bargaining***. However, the FPAWG report and Discussion Paper puts the cart before the horse in asking if regional and other variations should be permitted. This illustrates a fundamental lack of understanding of the history and nature of centralised bargaining systems.
The bargaining process		

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Good faith rules to apply Existing bargaining processes as currently defined in the Employment Relations Act.	***Good faith*** 36. Do you think that a duty of good faith should apply to bargaining parties in their dealings with each other and any government bodies as part of the FPA process? 37. Should a duty of good faith for FPA bargaining involve the same responsibilities as under the current Employment Relations Act? What new responsibilities, if any, will be needed?	It seems axiomatic that any collective bargaining process should adhere to the principle of good faith. And since FPAs would involve representatives bargaining on behalf of not just their members but the wider population of affected workers and businesses, this is even more important.
Minimum content for FPA to be set in law FPAs must include: • Objectives (of the FPA) • Extent of coverage • Details of wage rates and how future pay increases will be determined • Other terms & conditions of employment, including working hours of work, overtime rates, penal rates, leave, redundancy compensation, and any flexible working arrangements • Skills requirements and training commitments • Duration and expiry date of the FPA (maximum of 5 years) FPAs may include	***Scope*** 38. What do you think of having mandatory and excluded categories? 39. What do you think of the mandatory topics? 40. What terms, if any, should be in the excluded category? 41. What do you think of the alternative option to have only mandatory and permissible categories? 42. Should any of the items in the permissible and mandatory lists be in a different category? 43. Do you think that in the event of a bargaining stalemate, the determining body should only be able to set the mandatory terms of the FPA?	By definition, FPA conditions will override corresponding existing statutory minimum provisions in the affected industry or sector. FPAs may also act as a "Trojan Horse" for advancing several aspects of the Government's election manifesto that are not already covered by, among other things, the Employment Relations Amendment Act 2018. Chief among these are redundancy provisions (currently not required by law). FPAs could be used to impose minimum redundancy compensation provisions across whole sectors, on businesses large and small, successful or marginal. This would impose commensurate contingent liabilities on the balance sheet of every business. FPAs may also cover a range of other issues, including: the fundamental right of employers to manage their business, e.g. through provisions requiring employees and unions to be involved when making important business decisions.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
• Rules for managing the operation of the FPA including administrative arrangements for exemptions • Other matters, e.g. productivity-related enhancements, provided they are compliant with minimum employment standards and other law.		The ability to agree regional and other variations within sectors raises many issues of relativity and demarcation (both terms intrinsic to the pre-1990 award system), e.g. if Auckland is to be better treated than elsewhere, where does "elsewhere" begin? Do "Elsewherians" resolve their consequent angst at a sub sector, regional or enterprise level? The OECD/ILO view (espoused in the FPAWG report) that the optimal model is sector-based minima supplemented by enterprise level "top ups" is exactly the same "second tier bargaining" model that created the mayhem of the 70s and 80s in New Zealand. The economic reality of FPAs is that that settlements will need to reflect the capacity of the "weaker" (not necessarily the "weakest") employers to cope with the outcomes. The alternative is that only the strongest (usually the largest) employers survive, which is a recipe for monopolistic outcomes to flourish. Moreover, driving settlements to lowest common denominator levels is fine for equality of outcomes but not for productivity and is counterintuitive in preventing a "race to the bottom" because it places everyone at the bottom to start with. History indicates that it will be mainly low paid workers who seek to "top up" meagre FPA outcomes. Even worse, unlike the 1970s and 80s where unions had to "opt out" of coverage of the Industrial Relations Act to undertake second tier bargaining the recommendations actually promote second tier bargaining as part of the process. This creates an opportunity to force an opposing party into arbitration by drawing out a bargaining process. For instance, bargaining over an employer wage offer that is not acceptable to workers can be filibustered until the bargaining period expires.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
		The recommendations make no provision for extension of bargaining periods, so arbitration would be the only outcome of bargaining. This would in turn increase expectations of the use of second tier bargaining to resolve outstanding issues. Second tier bargaining was the sole cause of the massive industrial action that occurred during the 1970s and 80s.
Parties to choose representatives to bargain on their behalf Parties to be represented by incorporated entities. Workers to be represented by unions. Employers to be represented by employer organisations. Multiple representatives permitted. Representatives to elect a lead advocate. Business New Zealand and the New Zealand Council of Trade Unions, to have a role in coordinating bargaining representatives.	***Representation*** 44. Do you think that unions and employer organisations should be the major bargaining representatives as is normal? 45. Should there be a limit on the number of representatives at the bargaining table? 46. Should other interests be represented? E.g. non-unionised workers, funders or future entrants to the market. Should this be by agreement of the major bargaining parties? 47. How should bargaining representatives be selected? Is there a role for Government in ensuring the right mix of parties is at the table?	This recommendation recreates the representation structure that largely existed until 1991, although in 1987, the Labour Relations Act began to recognise the desirability of enterprise bargaining over award bargaining while allowing only unions to initiate it. A later proposed amendment contained a process for extending the right to initiate to employers but with a change of government and the 1991 introduction of the Employment Contracts Act this never passed into law. Under the award system Unions were coordinated by the Federation of Labour and Council of State Unions (later merged into the CTU) while employer associations were coordinated by the NZ Employers Federation. The FPAWG report proposes the same basic same model under which it is recommended that the "social partners (BusinessNZ and the CTU) will coordinate bargaining representatives. Individual industry bodies will also need to develop or hire resources and capacity to fulfil their role as employer representatives in their industry. Collective bargaining skills at this level have become extremely scarce since the demise of the award system in the early 1990s. This will place many employers and industry representatives at a considerable disadvantage when compared with the experience of unions in collective bargaining.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Representatives will have to meet minimum requirements. Disagreement about who is representative resolved by mediation or independent authority if no agreement. **Representatives must represent non-members in good faith** Non-members of unions or employer/industry organisations have the right to be represented during the bargaining process. Representatives have a duty to consult those non-members throughout the process. **Workers permitted to attend paid meetings to elect and instruct their representatives** Workers covered by FPA bargaining may attend paid meetings to elect their bargaining team, endorse claims and give instructions, e.g. on strike action.		Good faith in this context will only be proved when it can be demonstrated that all affected employers and workers feel they have had their interests represented (whether successfully or otherwise). However, there are significant risks. Industry and employer organisations currently represent less than 20% of businesses and have no established means of communicating with the remainder. Without an ability for all who will be affected by an FPA to have a say, the requirement for bargaining representatives to act in good faith is severely undermined. Moreover, without informed representation, non-members will have results imposed arbitrarily on them, a fundamental step away from democracy and good faith. This will require extensive consultative mechanisms to be set up nationally and by each representative body. This will be relatively straightforward for unions who operate such mechanisms now. However, no comparable infrastructure exists for employers. This will require the recreation of mechanisms that operated before the abolition of national awards in 1991. This effectively means all workers (employees and non-employees alike) across an entire industry will be attending multiple stop work meetings related to initiation, content of claims, conduct and progress of bargaining and ratification of FPAs. Currently only union members have rights to such meetings. Union members currently make up less than 10% of the private sector workforce. The "bargaining round" will become a period of disruption even if industrial action is not occurring. It is analogous to general elections, which occur only every three years but are nonetheless disruptive when they do.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Costs should not fall disproportionately on the groups directly involved in bargaining Government to consider how costs should be funded, whether through Government financial support, levy, fee or other means.	***Bargaining costs*** 48. Which of the three options for bargaining costs do you agree with, and why? Is there another option which you consider is best? 49. If a bargaining fee or levy is introduced, how should non-members be identified? 50. If a bargaining fee or levy is introduced, should the charge be made for all employees/employers as of a certain date? Would there need to be exceptions for certain circumstances? If so, which circumstances? 51. Could there be good reasons for departing from the current situation where bargaining parties cover the costs of bargaining?	This opens the door for the government to make good on the Labour Party's 2017 election manifesto promise to strengthen provisions relation to passing on. If costs such as delegate travel and accommodation are not to be covered directly by government, this could easily take the form of a levy on employers (including contractors) covered by an FPA, based on the number of workers who would be covered. If this was remitted to the union bargaining on behalf of those workers, it would effectively represent a defacto union membership fee for every affected worker. Given the union monopoly over FPAs, this is tantamount to compulsory unionism in its effect.
Need for unions, workers and employers to be given information and support to build capacity and capability in the FPA process. This will include • Role and resourcing of the independent authority • Role and resourcing of support bodies	***Active support*** 52. Do you think that a 'navigator' should be provided to support the bargaining parties? 53. What skills do you think would be most useful for a navigator to have? 54. Do you think the navigator should have any additional functions than those described? 55. Should the navigator role be performed and resourced by the government? 56. Should the parties be allowed to provide their own navigator, or refuse to have one altogether, if they agree to it?	These are all significant issues given the scale and scope of the recommended changes. It will almost certainly be wasted money given the absolute commitment of opposition parties to abolish any FPA scheme that is implemented by the current government.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
	57. Do you think that the bargaining representatives should have the primary responsibility for communicating with the parties they represent? 58. At which stages of the FPA process should there a requirement to communicate with the employers and employees under coverage of the agreement? (e.g. initiation, application for determination etc.) 59. How much oversight should the government have over the communication process? 60. Do you think that the principal nationwide employer and worker organisations (BusinessNZ and the New Zealand Council of Trade Unions) should support the bargaining parties to communicate with members?	
Dispute Resolution		
No recourse to industrial action during bargaining Strikes and lockouts related to FPA bargaining will be prohibited. Strikes may be permitted over other matters which coincide with FPA bargaining.	61. Do you think that we should make use of the existing employment relations dispute resolution system for FPAs?	Permitting strikes over matters that coincide with bargaining for an FPA carries connotations of strikes over political, economic and social matters, and includes the right to general strikes. Such strikes are currently unlawful. Permitting them would contravene the provisions of the Freedom of Association and Right to Organise Convention 1948 (No 87) the principles of which New Zealand is bound to observe by virtue of both its membership of the International Labour Organisation and the objects of the Employment Relations Act 2000[14].

[14] Business New Zealand's views on the right to strike can be found here.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
		However, an ability to strike over an FPA does not mean there can be no industrial action. As with the award system, bargaining for conditions above and additional to FPA conditions will be permitted and even encouraged. No restrictions on industrial action are envisaged in this regard. It is the "second tier" bargaining that created the enormous industrial relations issues of the 1970s and 80s.
Mediation and facilitation are the first instance options for dispute resolution Either party (or both) may refer matters relating to the proposed agreement bargaining to mediation.	***Mediation*** 62. In the event of a bargaining stalemate, should it be mandatory for parties to enter into a formal mediation process before they can seek a determination? 63. Should mediators be able to provide non-binding recommendations to the bargaining parties? Are there any other functions which a mediator, but not a navigator, should have?	Mediation is an appropriate option in all forms of bargaining. It provides a neutral environment in which issues can be addressed without expensive litigation. It seems unnecessary to offer a mediation option that is different in form and function from that which exists already under the Employment Relations Act.
Failed mediation to be referred to independent authority The independent authority may also be assisted by experts or panels	***Determination*** 64. What should count as a bargaining stalemate? 65. Should circumstances be set in law, or should parties need to agree that they have reached a stalemate? 66. Do you think that there should be a determination process in the event of a bargaining stalemate? If not, would there be enough incentives for parties to reach an agreement? 67. Do you think that the Employment Relations Authority is the most appropriate	Creating an independent body recreates the system operating prior to 1991, where the Arbitration Commission comprised an independent judge supported by "assessors" chosen by employers and unions who collectively had jurisdiction to hear and determine "disputes of interest" (i.e. disputes about terms and conditions of employment). However, the whole idea of having an arbitration institution to set wages and terms and conditions of employment is inconsistent with New Zealand's obligations in international law to encourage and promote voluntary systems of bargaining, and to refrain from compulsory arbitration. New Zealand entered into these obligations in 2003 when it ratified the Right to Organise and Collective

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
	organisation to carry out the determination function? 68. Do you think that the determining body should only be able to set terms for the mandatory topics of an FPA? 69. What role do you think the determining body should have in relation to bargaining stalemates for permissible FPA terms, if any? Should the determining body be able to set terms for permissible matters with the consent of the bargaining parties? Should it be able to make recommendations? 70. Do you think that the determining body should be able to ask for advice from experts to assist it in making its determinations? 71. Should the panel of experts need to be demonstrably independent from the bargaining parties? 72. If a panel of experts is consulted, should their advice be public or strictly confidential? Should experts be protected from liability for their advice?	Bargaining Convention 1949 (C98). This was over a decade after the demise of the award system in 1990.
Appeals Appeals permitted only on grounds of breach of process or coverage.	***Appeal rights*** 73. Should appeal rights be limited in any way? If so, what sort of limitations would be appropriate? 74. Do you think that appeal rights should be limited to matters of law only?	The history of national occupational awards in New Zealand illustrates the complexity of arriving at fair outcomes for workers and employers[15]. A right of appeal is an essential safety valve for the disputes that inevitably occur. Appeals will equally need to address

[15] See Appendix 1

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
		matters of fact as well as law, as the most likely issues will be those concerning the efficacy and fairness of wages and conditions.
Anti-competitive behaviour		
	75. Should FPAs be subject to a market impact test or should potential impacts be addressed by other means? 76. If not, is there another way to address market impact (such as consideration during negotiations)? 77. Do you think that the results of the market impact test should be subject to appeal? If so, what sorts of limitations would be appropriate? 78. What potential impacts of an FPA should be considered in the market impact test? What information would be required to assess these impacts? Are there any impacts which should not be considered? 79. Should there be a maximum time limit on how long the market impact test should take? 80. How feasible do you think the market impact test would be for a government body to assess? 81. How do you think potential risks and benefits should be assessed? Are some negative outcomes justified if the end result will be an overall benefit? 82. Should the government body have discretion to send agreements back to the bargaining parties or the determining body if they fail the market impact test?	The need to even consider a market impact test demonstrates the sheer unworkability of the FPA concept. New Zealand's low productivity will not be lifted by a system that needs independent assessment of whether or not, or the extent to which, a proposed FPA deal would impact some or all of the economy. The inherent inefficiency of this approach will slow responses to economic conditions and make New Zealand less agile in international markets. This is not a recipe for success.

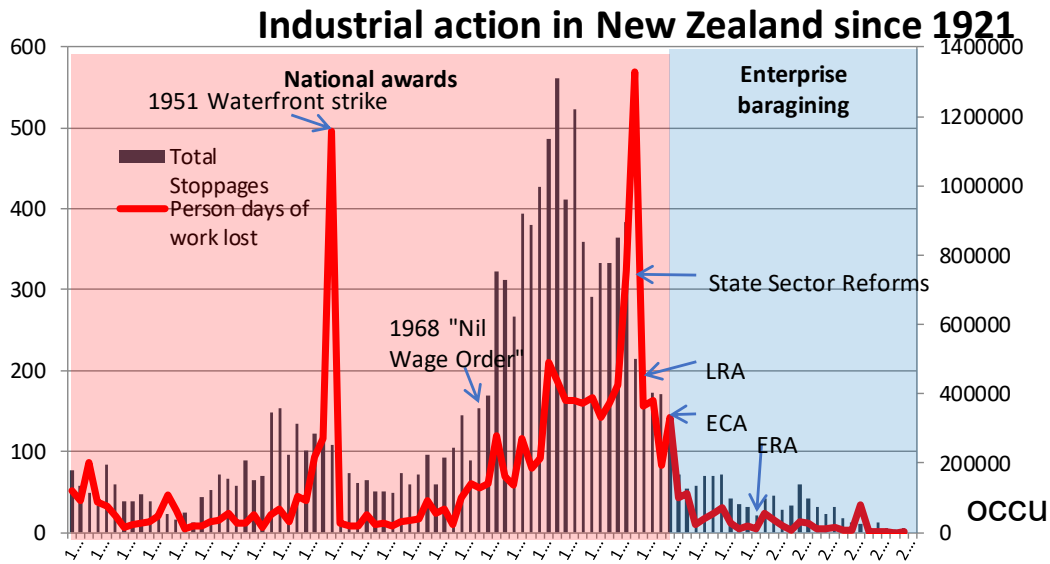
FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
	83. If the decision maker can send agreements back to the bargaining parties, should they be able to give recommendations? 84. Do you think that there should be an ongoing role for the market impact test after the agreement is put into force? If so, do you think a post-enactment market impact test would need to differ from the initial market impact test in any way? 85. If there is a market impact re-evaluation test, should it be available through an application process or another way? If on-demand, should there be an application fee or some other necessary criteria to pass before the test can be requested?	
Conclusion		
Ratification Procedure for ratification to be set in law. Simple majority of both employers and workers before agreement can be signed	***Ratification*** 86. Do you think that FPAs should need to be ratified by a majority of employers and workers who will be affected? 87. Do you think that a majority of voters is a more workable requirement than a majority of all affected parties? 88. How should employer votes be counted: one vote per business, or votes as a	All employers and workers, whether employees or not, unionised or not, members of a representative organisation or not, will have to have a means of "voting" for or against the proposed settlement. The logistics inherent in enabling all workers and all employers who will be covered by a proposed FPA to participate in this process are very significant. No current infrastructure for such an exercise exists.

FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
Workers are entitled to paid meetings for the purposes of ratifying the agreement. **No ratification required for agreements determined by independent authority**	proportion of workers employed in the covered sector? 89. How do you think the Government should support a ratification process? 90. What should happen if an agreement does not pass ratification? Should parties return to bargaining? 91. What should happen if some terms and conditions are determined by the determining body and others are agreed by the parties? Should the whole agreement need to be ratified, or just the terms agreed by the parties?	An agreement that is fixed by an independent authority will be final, just as awards were prior to 1991. Successful appeals on grounds of process or coverage will not change the content of an FPA.
Concluded FPAs to be registered Registered FPAs to be publicly available		Registration mirrors the requirements of awards pre 1990. Lodging copies with the government is a requirement for collective agreements now.
Enactment		
	92. Should the Government be allowed to change any terms of an FPA in the process of enacting it through regulations? If so, on what grounds? 93. What do you think is the best way to ensure that people are able to easily find information about FPAs?	New Zealand's international legal obligations prohibit the Government from altering the terms of a collective agreement, especially after it has been concluded. The ILO Committee on Freedom of Association has stated that *"state bodies should refrain from intervening to alter the content of freely concluded collective agreements."*
Enforcement		

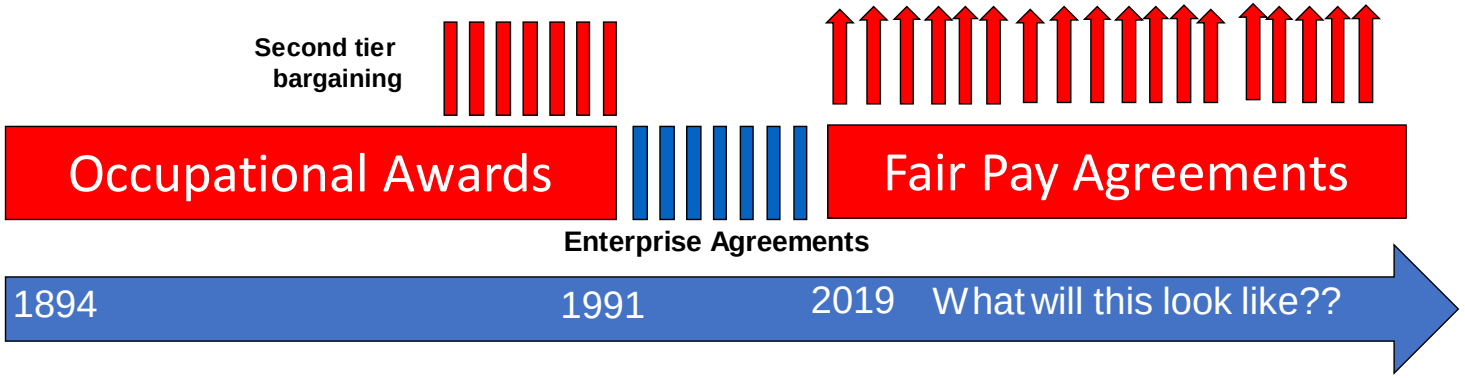
FPAWG Recommendation	Discussion Paper questions	BusinessNZ Comment
ER Act collective bargaining dispute resolution and enforcement mechanisms apply to FPAs as well.	94. What should happen if a person or group thinks that the minimum terms set by an FPA are not being met? 95. Do you think the Labour Inspectorate should have the ability to enforce minimum terms set by an FPA? Cost recovery 96. Do you think that the costs of dispute resolution in the FPA process should be consistent with the current system? 97. Aside from dispute resolution, do you think there are any functions or services in the FPA process for which it would be inappropriate to charge a fee? 98. What would be an appropriate share of costs between the government and bargaining parties for the other functions (excluding dispute resolution)?	Since FPAs will be employment agreements setting wages and terms of employment it seems axiomatic that the Labour Inspectorate should be able to enforce them as they do now for all other employment agreements. The costs of disputes are generally determined by the facts. This means that fair quantum and apportionment is best determined on a case by case basis. However, apportionment of costs is less significant than their impact and the issues associated with recovery. *Impact* - Costs will be additional to the impact of an eventual settlement and may be a significant impost on businesses already facing the uncertainty of the outcome of FPA negotiations. Businesses that are not members of representative bodies face the prospect of being hit with costs for something they had no part in managing. This is patently unfair. *Recovery* - If all employers affected by an FPA are to be levied with costs, who is to recover them and how, especially since most employers do not belong to a representative organisation? What authority will those required to collect costs have to enforce them? And is this even a proper role for a representative body? Ultimately the government is the only appropriate body to pay and manage the costs of FPA disputes.

Appendix 1

What will FPAs do?



Fair Pay Agreements will permit second tier bargaining, just as occurred in the 1970's and 80's



Appendix 2 – Awards and Agreements in 1990

Industry group	Sub group	Covered by:			
		National awards and agreements	District awards and agreements	Composite awards and agreements	Total awards and agreements
Abattoir employees		0	21	0	**21**
Aerated Water and Cordial Workers		1	0	0	**1**
Aircraft workers		4	5	0	**9**
Arts and crafts		0	0	1	**1**
Bakers and pastry cooks		3	0	0	**3**
Biscuit and confectionery workers		2	0	0	**2**
Brewery workers, malthouse and bottling house workers		6	0	0	**6**
Brick, tile, clay, pottery and porcelain workers		9	2	0	**11**
Bricklayers		3	0	0	**3**
Brush and broom trade employees		1	0	0	**1**
Building tradesmen and related workers		1	3	18	**22**
Butchers (Retail Shops)		1	0	1	**2**
Canister workers		1	0	0	**1**
Canvas workers		1	0	0	**1**
Carpenters and joiners		0	5	27	**32**
Chemical manure and acid workers		2	1	0	**3**
Childcare workers		4	1	0	**5**
Cleaners, caretakers, lift attendants and watchmen		3	13	38	**54**
Clerical workers	Airways	1	2	0	**3**
Clerical workers	Banks	1	5	0	**6**
Clerical workers	Chartered accountants	6	0	0	**6**
Clerical workers	Freezing companies	1	0	1	**2**
Clerical workers	General	3	38	31	**72**

Clerical workers	Hotels	2	1	1	**4**
Clerical workers	Insurance companies	3	0	0	**3**
Clerical workers	Legal employees	1	2	0	**3**
Clerical workers	Librarians and their assistants	1	0	1	**2**
Clerical workers	Local authorities	0	115	0	**115**
Clerical workers	Nurse receptionists	2	0	0	**2**
Clerical workers	Rental cars	1	0	0	**1**
Clerical workers	Shipping companies	3	0	0	**3**
Clerical workers	Stock and station agents	1	0	0	**1**
Clerical workers	Taxi telephonists	1	0	0	**1**
Clerical workers	Timber supervisors	1	0	0	**1**
Clerical workers	Totalisator agency board	1	0	0	**1**
Clerical workers	***Total***	**29**	**163**	**34**	**226**
Clothing trade employees	Clothing trade employees	3	0	0	**3**
Clothing trade employees	Tailoring trade employees	2	0	0	**2**
Clothing trade employees	***Total***	**5**	**0**	**0**	**5**
Coachworkers		1	10	9	**20**
Coal carbonisation employees		1	0	0	**1**
Commercial travellers ands sales representatives		1	0	0	**1**
Community and voluntary service organisations		1	0	0	**1**
Concrete and Pumice goods making etc, workers		2	0	0	**2**
Cooks and stewards	Air	6	0	0	**6**
Cooks and stewards	Marine	3	0	0	**3**
Cooks and stewards	***Total***	**9**	**0**	**0**	**9**
Cycle workers		1	0	0	**1**
Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	Dairy chemists	1	0	0	**1**
Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	Dairy factory employees	1	2	0	**3**

Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	Dairy factory managers and assistant managers	1	0	0	**1**
Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	Milk pasteurising and bottling (factory) employees	1	0	0	**1**
Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	Milk roundsmen and depot heads	1	2	0	**3**
Dairy and cheese factories, pasteurising, and bottling factories, and milk roundsmen	***Total***	**5**	**4**	**0**	**9**
Dental employees assistants and technicians		3	0	0	**3**
Drivers (Motor and horse)	Ambulance	5	0	0	**5**
Drivers (Motor and horse)	General	10	30	41	**81**
Drivers (Motor and horse)	Local bodies	1	8	9	**18**
Drivers (Motor and horse)	Passenger transport (other than taxi)	1	6	0	**7**
Drivers (Motor and horse)	Taxi	1	0	0	**1**
Drivers (Motor and horse)	Van salesmen	0	1	0	**1**
Drivers (Motor and horse)	***Total***	**18**	**45**	**50**	**113**
Electrical goods makers		1	0	0	**1**
Electrical workers	Electric supply authorities power-station (switchboard) operators	1	0	0	**1**
Electrical workers	Electric supply authorities: electricians, inspectors, linemen etc	1	10	0	**11**
Electrical workers	General electrical	5	18	49	**72**
Electrical workers	Radio and associated electronics	2	0	0	**2**
Electrical workers	***Total***	9	28	49	**86**
Engine drivers, firemen etc	General and local bodies	2	42	16	**60**
Engine drivers, firemen etc	Pulp and paper industry	3	0	0	**3**
Engine drivers, firemen etc	***Total***	**5**	**42**	**16**	**63**
Engineering	Battery manufacturing employees	1	0	2	**3**
Engineering	Bluff aluminium smelter employees	0	0	1	**1**
Engineering	Boilermakers	1	2	21	**24**
Engineering	Draughtspersons	1	0	1	**2**

Engineering	Factory engineers	1	10	4	**15**
Engineering	Farm machinery servicepersons	1	0	0	**1**
Engineering	General metal trade employees	4	52	61	**117**
Engineering	Industrial mechanics	1	1	0	**2**
Engineering	Moulders	1	0	1	**2**
Engineering	Shift engineers	3	7	0	**10**
Engineering	***Total***	**14**	**72**	**91**	**177**
Ferry employees		0	0	1	**1**
Firemen		2	2	0	**4**
Fish trades employees		6	0	0	**6**
Fishermen		1	6	0	**7**
Flax mill employees		1	0	0	**1**
Flight services officers		1	0	0	**1**
Flour mill, oatmeal and pearl barley mill employees		1	0	0	**1**
Foodstuffs, chemicals, drugs, toilet preparations and related products makers		4	17	0	**21**
Footwear workers	Footwear repairers and bespoke workers	1	0	0	**1**
Footwear workers	Rubber footwear employees	1	0	0	**1**
Footwear workers	***Total***	**2**	**0**	**0**	**2**
Forestry workers		1	3	0	**4**
Fur workers	Dressers and dyers	1	0	0	**1**
Fur workers	Garment workers	1	0	0	**1**
Fur workers	***Total***	**2**	**0**	**0**	**2**
Furniture trade employees	Furniture makers and upholsterers, bedding and wire mattress makers, flock, felt and feather workers	1	1	4	**6**
Gas workers	Coal gas works employees	5	0	1	**6**
Gas workers	Compressed gas workers	4	0	0	**4**
Gas workers	***Total***	**9**	**0**	**1**	**10**
Gelatine and glue workers		1	0	0	**1**
Glassworkers	Glass bevelling, silvering and leadlight workers	1	0	0	**1**
Glassworkers	Glass manufacturing workers	3	0	0	**3**
Glassworkers	***Total***	**4**	**0**	**0**	**4**

Glove workers		2	0	0	**2**
Grocery and supermarket employees		1	0	0	**1**
Hairdressers		1	0	0	**1**
Harbour board employees		2	1	2	**5**
Hatters		1	0	0	**1**
Herd testers		1	0	0	**1**
Hospital domestic employees (private)		1	0	0	**1**
Hotel, restaurant and club employees	Chartered club employees	1	0	0	**1**
Hotel, restaurant and club employees	Licensed hotel employees	2	0	0	**2**
Hotel, restaurant and club employees	Private hotel employees	2	2	0	**4**
Hotel, restaurant and club employees	Rest home employees	1	0	0	**1**
Hotel, restaurant and club employees	Tea rooms and restaurant employees	1	11	21	**33**
Hotel, restaurant and club employees	***Total***	**7**	**13**	**21**	**41**
Ice cream factory and frozen products manufacturing employees		2	2	0	**4**
Jewellers, watchmakers, engravers and die sinkers		1	0	0	**1**
Journalists		2	8	3	**13**
Labourers, gardeners, greenkeepers, nurserymen etc	Builders, contractors and general	3	8	39	**50**
Labourers, gardeners, greenkeepers, nurserymen etc	Cement, shingle, sand and coal, coke and firewood merchants	1	0	3	**4**
Labourers, gardeners, greenkeepers, nurserymen etc	Greenkeepers, bowling clubs and other sports bodies	2	0	1	**3**
Labourers, gardeners, greenkeepers, nurserymen etc	Local bodies	1	17	10	**28**
Labourers, gardeners, greenkeepers, nurserymen etc	Miscellaneous	3	2	1	**6**
Labourers, gardeners, greenkeepers, nurserymen etc	Nurserymen and gardeners	1	0	1	**2**

Labourers, gardeners, greenkeepers, nurserymen etc	Oil exploration workers	3	0	0	**3**
Labourers, gardeners, greenkeepers, nurserymen etc	Oil production workers	1	0	0	**1**
Labourers, gardeners, greenkeepers, nurserymen etc	Racing and trotting clubs	1	0	0	**1**
Labourers, gardeners, greenkeepers, nurserymen etc	***Total***	**16**	**27**	**55**	**98**
Laundry, dry cleaning and dyeing workers		5	1	0	**6**
Lime and cement manufacturing workers	Cement manufacturing workers	9	0	0	**9**
Lime and cement manufacturing workers	Lime manufacturing workers	1	0	0	**1**
Lime and cement manufacturing workers	***Total***	**10**	**0**	**0**	**10**
Marine engineers		1	5	7	**13**
Match factory employees		1	0	0	**1**
Meat, poultry and game processors, packers and preserving	Bacon workers	3	1`	0	**3**
Meat, poultry and game processors, packers and preserving	Boning packaging and smallgoods workers	1	26	0	**27**
Meat, poultry and game processors, packers and preserving	Freezing workers: meat processing workers	2	11	0	**13**
Meat, poultry and game processors, packers and preserving	Game packing house workers	1	6	0	**7**
Meat, poultry and game processors, packers and preserving	Poultry processing workers	1	4	0	**5**
Meat, poultry and game processors, packers and preserving	***Total***	**8**	**47**	**0**	**55**
Merchant service officers	Ships masters and officers	6	9	0	**15**
Merchant service officers	Tugmasters, dredge masters and launch masters	2	6	4	**12**
Merchant service officers	***Total***	**8**	**15**	**4**	**27**
Mine workers	Coal mine workers	3	0	0	**3**
Mine workers	General	18	0	2	**20**
Mine workers	Gold mine workers	3	0	0	**3**

Mine workers	***Total***	24	0	2	**26**
Motor mechanics and garage employees	Motor mechanics and garage and petrol station employees	1	2	0	**3**
Musicians		1	0	0	**1**
Nursing staff (including private hospitals)		5	3	1	**9**
Optical dispensers and opticians		2	0	0	**2**
Paint and varnish and related workers		6	3	32	**41**
Paper workers	Packaging and associated printing	1	0	0	**1**
Paper workers	Paper mills, wood pulp and paper product workers	6	0	4	**10**
Paper workers	Waste paper processing workers	2	0	0	**2**
Paper workers	***Total***	**9**	**0**	**4**	**13**
Pharmacists assistants (retail)		2	0	0	**2**
Photo engravers		2	0	0	**2**
Photographic processing workers		1	0	0	**1**
Piano tuners and repairers		1	0	0	**1**
Pilots (air)		2	7	0	**9**
Plasterers	Plaster manufacturing employees	1	0	0	**1**
Plasterers	Plaster wallboard makers	1	0	0	**1**
Plasterers	Solid and fibrous plasterers and tile fixers	1	0	0	**1**
Plasterers	***Total***	**3**	**0**	**0**	**3**
Plumbers		2	9	29	**40**
Power project employees		1	0	0	**1**
Printing trade employees	General	2	1	8	**11**
Printing trade employees	Wallpaper manufacturing	1	0	0	**1**
Printing trade employees	***Total***	**3**	**1**	**8**	**12**
Public passenger transport workers	General	1	3	1	**5**
Public passenger transport workers	Officials and foremen	1	0	0	**1**
Public passenger transport workers	***Total***	**2**	**3**	**1**	**6**
Roofing materials (bituminous process) makers		1	0	0	**1**

Rope and twine manufacturing workers		1	0	0	**1**
Rubber workers		3	4	0	**7**
Rural workers	Agricultural workers	4	1	3	**8**
Rural workers	Gardens and orchards workers	2	0	0	**2**
Rural workers	***Total***	**6**	**1**	**3**	**10**
Saddlery and canvas workers		2	0	1	**3**
Sales advertising representatives		1	0	0	**1**
Seamen and firemen		4	2	3	**9**
Shearers, shed hands and cooks		1	0	0	**1**
Ship builders and repairers		2	1	2	**5**
Shop employees	Cake	1	0	0	**1**
Shop employees	Dairy, confectionery and mixed business	1	0	0	**1**
Shop employees	Fish	1	0	0	**1**
Shop employees	Fruit and vegetables	1	0	0	**1**
Shop employees	Other retail shops	4	0	4	**8**
Shop employees	***Total***	**8**	**0**	**4**	**12**
Soap, candle etc workers		2	9	0	**11**
Sports goods makers and repairers		5	0	0	**5**
State workers	Education services	20	0	0	**20**
State workers	General	0	66	3	**69**
State workers	Health services	56	0	1	**57**
State workers	***Total***	**76**	**66**	**4**	**146**
Stonemasons		1	0	0	**1**
Stores and warehouse employees	Cool store and cold storage workers	1	1	0	**2**
Stores and warehouse employees	Fruit and produce stores employees and packers	3	0	0	**3**
Stores and warehouse employees	Oil stores employees	1	0	0	**1**
Stores and warehouse employees	Storepersons and packers	5	15	50	**70**
Stores and warehouse employees	Warehouse employees	4	0	0	**4**
Stores and warehouse employees	Wine and spirit merchants employees	1	0	0	**1**
Stores and warehouse employees	Wool, grain, hide, manure etc stores employees	2	0	0	**2**
Stores and warehouse employees	***Total***	**17**	**16**	**50**	**83**

Sugar workers		1	0	0	**1**
Tallymen		1	0	0	**1**
Tanners and fellmongers	Fellmongers	2	0	0	**2**
Tanners and fellmongers	Tanners	4	0	0	**4**
Tanners and fellmongers	***Total***	**6**	**0**	**0**	**6**
Technicians	Bowling centres	1	0	0	**1**
Technicians	University	1	0	0	**1**
Technicians	***Total***	**2**	**0**	**0**	**2**
Theatres, places of amusement and sports bodies employees	Actors and actresses	3	0	0	**3**
Theatres, places of amusement and sports bodies employees	Front of house (theatre)	1	0	0	**1**
Theatres, places of amusement and sports bodies employees	Motion picture projectionists	2	0	0	**2**
Theatres, places of amusement and sports bodies employees	Racing, trotting and hunting clubs,	1	0	0	**1**
Theatres, places of amusement and sports bodies employees	Sports bodies, agricultural societies, billiard rooms, skating rinks, dance halls etc	4	1	3	**8**
Theatres, places of amusement and sports bodies employees	Stage employees	3	0	0	**3**
Theatres, places of amusement and sports bodies employees	***Total***	**14**	**1**	**3**	**18**
Threshing, chaffcutting, clover shelling and agricultural contractors employees		1	0	0	**1**
Timber workers	Timber workers	3	9	4	**16**
Timber workers	Wood pulp workers	1	0	3	**4**
Timber workers	***Total***	**4**	**9**	**7**	**20**
Tobacco workers		2	1	0	**3**
Umbrella makers		2	0	0	**2**
Waterside workers	Dock labourers (chipping, cleaning, painting etc)	1	0	0	**1**
Waterside workers	Waterside workers	1	2	0	**3**
Waterside workers	Wharf foremen (carriers)	3	6	0	**9**
Waterside workers	***Total***	**5**	**8**	**0**	**13**

Woollen mills, synthetic fibre and hosiery factories employees	5	10	0	**15**
Woolscourers	1	0	0	**1**
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