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SUBMISSION ON

Fair Pay Agreements Bill

SUBMITTED TO:

Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington

DATE:

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ABOUT US

The Business Central Group, which includes members of Business Central, Wellington Chamber of Commerce, Porirua Chamber of Commerce, and Export NZ Central (Business Central) is a business membership association, representing around 3,600 members across Central New Zealand (Gisborne to Taranaki and down to Nelson). We have represented business in the Wellington Region for 165 years, and advocate for the interest of business, and the development of our region’s economy.

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OVERVIEW

Thank you for the opportunity to submit on this perversely consequential piece of legislation.

Business Central Group **strongly opposes** the Fair Pay Agreements Bill.

We urge the Committee to listen to those in opposition to the bill. Our opposition is based on the very real and problematic impacts the proposed system will have. We urge Parliament and the Government to change course and instead focus on improving minimum employment standards for all, rather than a proposal which is ill targeted and will have a chilling effect on our labour market, leading to a less productive and inefficient employment environment.

Business Central Group supports higher wages and improved working conditions. A driving reason many of our members start their business in the first place is to seize an opportunity that supports and creates decent, well-paying jobs for their community.

Our members want to pay their employees reasonable wages that reflect the productivity of the organisation. Many work tirelessly to provide proper conditions and keep their workplaces safe.

To deliver higher wages, businesses need workplace flexibility, the conditions to enable higher productivity, and a supportive, growing economy that generates benefits for every New Zealander.

FPAs will not achieve this.

In their current form, FPAs will make working people worse off, impede economic growth, and drive inflation across the economy. They will remove the flexible economy that has vastly improved New Zealand’s standard of living since the 1980s and leave us with a sluggish, unproductive economy, unequipped for the challenges of a twenty-first-century labour market. Their inflationary impact risks eroding the wages of the very people they are trying to help and worsening our nation’s stagflation crisis.

On top of this, FPAs risk breaching international law and forcing employers and employees into agreements they would never enter voluntarily.

There is a better way. We support focusing on voluntary agreements and targeting specific industries, instead of a one-size-fits-all approach. We also believe the best way to improve pay and conditions for New Zealand's lowest-paid workers is to expand minimum employment standards and target employers who break the rules.

FPAS WILL HURT OUR ECONOMY

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Loss of Workplace Flexibility

Businesses need flexibility to grow.

Just two years ago, New Zealand's economy was able to rapidly adapt to the arrival of Covid-19 through a switch to working from home – utilising new, flexible ways of doing business that were unthinkable just a few weeks earlier.

In today's modern economy, flexible work is increasingly more important. Whether it is the parent juggling childcare or the tech company whose employees work remotely across New Zealand, to operate as a 21st-century economy, New Zealand needs to let business be business.

The reality of running a business in the modern economy is far more complex and dynamic than this rigid legislation accounts for – with decisions needing to be made by businesses on a daily basis to adapt, innovate and grow. Economic planners cannot predict this – so the role of government should be to get the settings right and allow businesses to run their own operations.

The inclusion of conditions as a negotiation point in Fair Pay Agreements – mean productivity-enhancing changes, and bespoke, flexible working arrangements could be stymied as part of wider pay negotiations, slowing our economy down.

Research from our March 2022 Central New Zealand Business Confidence Survey shows the largest barrier to growth for our region's businesses is a shortage of skilled workers. Without appropriate allowances for flexible working, FPAs risk exacerbating this by excluding workers whose needs do not meet the blunt criteria of an FPA – they can't work the right hours, or in the right conditions.

Of course, there is a need for minimum standards to make sure workers are treated fairly. We strongly support this concept of standards, as we outline later in this submission, and recommend making changes to the Employment Standards Legislation Act as a way to help New Zealand's lowest-paid workers. FPAs, do not target these standards and treat vastly different employers in the same way.

Industrial Action Will Become More Likely

As history has shown, awards-based systems tend to lead towards significantly higher industrial action.

Here, we endorse the submission by our partners at BusinessNZ, who provide evidence on historical data – which points to a clear correlation between awards systems and increased strike activity.

New Zealand has already seen an increase in strike activity in recent years, and while the Bill prevents strikes during an FPA negotiation, the right remains as part of the wider collective bargaining process. We are concerned that this will radically change the culture of New Zealand's employment system, to one based on adversarialism and conflict that can only result in significant increases in industrial action.

The disruption effects of industrial action will have flow-on effects throughout the entire economy. Lost days of output and increased disruption will further drive-up uncertainty and the cost of doing business, limiting our economy's growth.

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Impact on the Overall Economy

We are deeply concerned by the Pay Agreements Working Group's (FPAWG), assumption that smaller, 'unproductive' firms need to be forced out of the market to improve New Zealand's productivity.

The Working Group argued that FPAs:

"…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."

The damage FPAs will do to small business is then, a feature, not a bug of the legislation. As unsustainable costs are pushed onto businesses by FPAs– far outstripping the productivity of their operations – they will be forced to close their doors, and the New Zealand economy will shrink. Inevitably, these will be small and start-up firms, with less capacity to meet the new costs.

We strongly disagree with this approach. Driving small firms out of the market will hurt productivity, shrink the economy, and reduce competition in the market.

We are concerned with the belief espoused by FPAWG that small firms are unproductive, undynamic, or need to be forced out of the market.

Indeed, it is often these smaller companies that are the most dynamic in the market – and the nature of running a business on limited funds leads to the most innovation for our economy.

Likewise, start-up companies leading the way in new industries are highly likely to be harmed, as the additional costs to operations will increase the already high barriers to market entry.

With smaller firms exiting, and new firms entering the market, our market competition will be reduced, further limiting our innovation, and concentrating market share among larger businesses. The changes will have a perverse effect on productivity and shrink, rather than grow New Zealand's economy.

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FPAS WILL EXACERBATE INFLATIONARY PRESSURE

Fair Pay Agreements will add costs without improving the ability of employers to make up the increased costs. That is, by nature, inflationary.

FPAs do not improve our productivity, and as illustrated in the previous section, they risk worsening it. They will place another, rapidly escalating cost onto business. Already, the business costs are running ahead of consumer prices – indicating that businesses are wearing a significantly higher share of cost increases than they are passing on in higher prices.

Combined with the aforementioned drag that FPAs will cause on economic growth, their introduction risks the worsening of an already stagflationary environment, where prices rise despite sluggish economic growth.

The Wider Reform Context

It should be noted that Fair Pay Agreements are taking place at the same time as both a high global cost environment for business and as several major government reforms look to place an increasing cost burden on business.

In the global context, global inflation is at a multi-decade high, energy prices and supply chain shortages are driving up costs in every sector of the economy, and producer prices are outstripping consumer prices – much of the cost burden is being worn by business.

In the domestic context, Fair Pay Agreements come in addition to the new domestic leave, five days of additional sick leave, rapid increases in the minimum wage, a new public holiday, and the potential for a 2.78% payroll tax to fund Social Insurance. Regardless of the overall merits of these reforms, these proposals all add costs. Combined, they amount to a drastic shift in the cost of doing business and could be the differences in whether many small to medium businesses with high costs pressures survive.

As indicated previously, if smaller businesses are forced out of the market by these reforms, this will have broad negative consequences on New Zealand's competition, innovation, and economic growth. Alternatively, if businesses survive by passing on these costs through higher prices, it will further worsen New Zealand's cost of living crisis.

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Inflation's Impact on Workers

Even if Fair Pay Agreements succeeded in lifting nominal wages – a notion this submission contests – those wages would be eroded by the inflation FPAs cause. Higher nominal wages will not help low-paid employees if those gains are eroded by higher prices and will likely worsen their economic situation.

As an example, take the recent inflationary environment, which has seen high nominal wage growth (of 3%) be eroded by record inflation (6.9%). If businesses are given these additional costs, they will inevitably be passed on to consumers to keep their staff employed – causing inflation to rise further.

FPAs are intended to improve the wages and livelihoods of low wage workers. But these workers spend the highest share of their income – particularly on food and energy, which tend to be hit hardest by inflationary pressures – and will therefore be hit hardest by inflation.

FPAS ARE UNFAIR FOR BOTH WORKERS AND EMPLOYERS

Regardless of the overall impact of the reforms on the New Zealand economy, the agreements are unfair – both to employers and to workers

– because they apply to businesses and employees that would never have entered them voluntarily.

Employers without a single employee who requested an FPA would still be covered under the proposed model. Employees who are happy with their current conditions could have their individual agreements overruled, or their flexible hours taken away. The broad settings applied to entire industries will impose countless standards on people who would otherwise have no interest in them.

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It is unconscionable, that, for example, an employee who wants more flexible hours to look after family, would have standards imposed on them through action unrelated to their employer or their colleagues.

We believe that workers should have a say in their working hours, their pay, and their conditions. We also believe that employers know how to run their business efficiently and adapt to a twenty-first-century economy. Imposing narrowly agreed-upon standards onto an entire industry or workforce is unfair to all parties.

A Potential Breach of International Law

The forced arbitration element of the legislation is so egregious that it risks breaching New Zealand's agreements under the International Labour Organisation (ILO). The compulsory nature of Fair Pay Agreements aligns with past cases, found to have been inconsistent with the provisions of the Right to Organise and Collective Bargaining Convention 1949 (C 98) to which New Zealand is a signatory.

New Zealand's ratified international obligations bind us to the principle of free and voluntary negotiation. The process, outlined in this legislation, is neither.

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has already declared that FPAs are neither voluntarily nor free. In its 2021 report on New Zealand's compliance with its obligations under C98, CEACR stated:

"The Committee first wishes to recall that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life,

personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis."

In addition, the ILO's Committee on Freedom of Association has found that:

"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"

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By forcing employers and employees into agreements they do not want, New Zealand risks undermining its commitments to free and voluntarily collective bargaining. Doing so could have us found to be in violation of international law, and our reputation tarnished on the global stage.

New Zealand has an interest in holding to a rules-based world order, and it should go without saying that if something is illegal it should not go ahead.

This bill could compromise New Zealand's international reputation, with further investigation now underway from the ILO. We urge the Government to exercise restraint on compulsory arbitration to maintain New Zealand's representation and ensure our standard of human rights is above reproach.

OUR ALTERNATIVE PLAN: A FAIRER WAY FOR FAIRER PAY

There are better, more effective ways of improving our labour market, helping good employers, and ensuring employees are treated well.

First, the legislation should be changed to make FPAs voluntary. Only employers and employees who want to participate in FPAs should be obliged to take part, rather than encompassing entire industries in the negotiations. This at least would be fairer to the bargaining parties, and consistent with New Zealand's international legal obligations.

Second, target FPAs should be targeted to specific sectors. While the model of FPAs is broadly flawed, the harm would be significantly reduced, by only implementing them in New Zealand's lowest wage sectors. It makes no sense for the goals of the legislation to apply FPAs, for example, to high-wage sectors, and further stymie New Zealand's growth.

Finally, we support enhancing the protections for New Zealand's lowest-paid workers through the enhancement of minimum employment standards legislation and targeting employers who break the rules. By increasing labour inspections and improving minimum employment standards, we can make sure workers are treated well, no matter their occupation. Unlike fair Pay Agreements, that would actually be fair.

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CONCLUSION

The Fair Pay Agreements Bill is a blunt instrument, out of date, and out of touch with modern ways of working. It will harm our economy, stifle innovation, and push small businesses under. Its byzantine rules will prevent the same flexible working arrangements that helped us through the pandemic, and that will help build our modern economy.

The added costs on business, without the improvement of productivity, will drive inflation, and erode the wages of employees, potentially worsening our stagflation crisis.

It is unfair to employers and employees, who may be forced into agreements they want no part of and risks being out of line with our obligations under international law.

Business Central Group strongly opposes the Bill and recommends it not proceed.

Ngā mihi nui,

Simon Arcus
Chief Executive
Business Central Group