19 May 2022

Consultation on the Fair Pay Agreements Bill

We are pleased to provide comment on the Fair Pay Agreements Bill.

About Te Rito Maioha Early Childhood New Zealand

Te Rito Maioha Early Childhood New Zealand (ECNZ) is an Incorporated Society of members committed to high quality early childhood education for every child. Established in 1963, the organisation is an influential leader in shaping today's early childhood sector through advocacy, policy, tertiary education qualifications and professional development programmes.

We advocate for early childhood education services and the teachers|kaiako who provide education to thousands of infants, toddlers, and children|tamariki. Our members are drawn from a diverse range of community-based, privately-owned, kindergarten and homebased early childhood education services.

Te Rito Maioha is also a registered Private Training Establishment (PTE) with the highest Category One rating for a tertiary provider. We are accredited and approved by New Zealand Qualifications Authority (NZQA) to deliver a range of undergraduate, graduate, and postgraduate qualifications (levels 4-9), including specialist teacher|kaiako education, both nationally and internationally.

We are committed to achieving high-quality teaching and learning by:

- increasing teachers'|kaiako knowledge of Te Tiriti o Waitangi and Aotearoa New Zealand's dual cultural heritage;
- providing access to online blended delivery of undergraduate, graduate, and postgraduate tertiary education programmes leading to recognised and approved qualifications;
- promoting quality teaching and leadership through ongoing professional learning and development programmes;
- providing a range of unique resources and services to our members.

General Comments

While we are generally in support of Fair Pay Agreements which have the potential to raise and standardise the employment conditions across industries or occupations, we have a number of queries and concerns regarding the proposed Bill and its impact on the Early Childhood Education (ECE) sector.

Affordability and funding

The sector is currently under immense financial stress. The outcome of a Fair Pay Agreement is likely to be increased wage costs. Without additional government funding and support, many ECE centres who are currently struggling to make ends meet with Pay Parity, will not be able to continue to operate without increasing fees. This then has the consequence on affordability for families who will then be unable to pay these fees, resulting in another consequence of centres being forced to close due to low participation thereby impacting our youngest tamariki learning, meaning that the government's goals

for education relating to "learner at the centre, barrier free access and world class inclusive public education" is severely eroded.

Test to initiate bargaining

Section 29 requires either at least 1,000 covered employees or 10% of all covered employees to support initiating bargaining. In the ECE sector, (Education and Care centres and Kindergartens) there are 32,985 teachers (registered and unregistered)[1]. Using the 1,000 figure, this is only 3% of teachers – a level of support that is very small to have an impact on 3,420 individual ECE centres run by approximately 1,500 service providers / employers. We believe then that the intent of this Bill falls way short in ensuring a sector is well represented within Fair Pair Agreements should such a low threshold be required.

We submit that the threshold should be higher for large sectors or occupations.

Timelines

Section 56 – 3 months is too short a timeframe for the employer bargaining party to be named. Within those 3 months the following needs to occur:

- employer associations to have been assessed and approved by the Chief Executive of MBIE
- employer associations need to work with many ECE employers to confirm which employers they will represent
- eligible employer associations need to agree to join the employer bargaining side
- the Chief Executive of MBIE needs to assess the application to form or join the employer bargaining side

We note that individual employers cannot join an employer bargaining side, only employer associations. This has the potential to exclude some, if not most, employers who are not represented by an association.

Once the bargaining party has been agreed*, Section 59* allows only 20 working days to:

- agree an inter-party side agreement including details of the process they will follow to make decisions relating to bargaining
- appoint a lead advocate.

Given that it took over 15 months to organise a MEPA raised by NZEI Te Tiu Roa on 6 November 2020 for teacher Pay Equity claim, both of these timeframes are very unrealistic and for many larger sectors similar to ECE, be unachievable.

We submit that the time frames should be longer.

[1]Ministry of Education, Education Counts, December 2021 data

Proposed backstop

Parliamentary Paper G.46C proposes making the default bargaining party role voluntary and adding a 'backstop' if there is no eligible employer bargaining party. The parliamentary paper refers to a 'set time period' (paragraph 10.1). There is no suggestion as to what this time period will be, and given our concerns about the unrealistic timeframes above, may mean that the backstop may be triggered while a potential bargaining party is still in the process of being formed and approved.

We submit that the time frames need to be extended and the clock should stop when an employer association has made an application to be approved, as the parties cannot control the length of time the approval process may take.

We are also concerned that the backstop (the Employment Relations Authority) will be able to set terms without representation from employers (paragraph 14), and that they are not **required** to seek out information about a specific industry or group (paragraph 15). This fundamentally excludes employers. This may also result in unaffordable salaries owing to their employees, risking closure of the ECE centre or hefty penalties towards the employer for non-compliance, when they are already in a financially precarious position due to under-funding from the government and COVID impacts

We submit that if the Employment Relations Authority is used as a backstop due to the lack of an eligible employer's association and the default employer bargaining party declining to participate, the process followed by the Authority must include the opportunity for input and representation from employers involved before terms are set. We submit that it should include a process similar to the facilitation approach used for collective bargaining, to enable the parties to have the opportunity to attempt to reach agreement, prior to the Authority determining the terms.

Access to workplace

Section 86 allows representatives of an employee bargaining party to enter workplaces to have discussions with covered employees without the employer's consent. Even with the conditions relating to access (Section 87(1)(b)), in ECE this is unworkable as ECE teachers are required by legislation to be 'on the floor' working with children, and if taken away from this role, be replaced so required adult:child ratios are maintained. In order to replace them, centre managers need to know in advance to plan for these occasions.

Section 87(1) (c)(i) states that a representative must comply with any existing reasonable procedures and requirements that relate to safety or health. In the current COVID environment, all ECE centres are required to have risk assessments that mitigate the risk to young tamariki who cannot be vaccinated. For those with high risk tamariki or whānau, this may require adults on site to be vaccinated, complete a RAT test prior to entry and/or wear a mask. In order to know the requirements of a centre, representatives will need to talk with centre management before coming on site.

We submit that this section should be amended to provide for notice for access to be given to employers, and that access may be delayed in the case of a significant health and safety risk (such as an outbreak of a notifiable disease or lockdown).

Ratification

Section 144 and *Schedule 2* state how many votes each covered employer has. We are pleased to see that smaller employers (those with fewer than 21 employees) will get more votes per employee but question if the increased number for those with 10-20 employees is sufficient to balance the voting power of larger employers. The ECE sector is made up of many smaller employers.

We submit that the votes for smaller employers should be increased to ensure their voice is not lost.

Eligible employer associations

In *Section 42(c),* the meaning of an employer association (to be on the employer bargaining side) includes having a purpose that enables the association to promote the collective work interests of covered employees. In the ECE sector, most peak bodies will not meet this test and will need to change their Rules or Constitution so they can be approved by the Chief Executive of MBIE as an association to be part of an employer bargaining party. In addition, if the Ministry of Education is to be involved in bargaining, they will not meet this requirement.

We submit that the purpose test should be removed or widened so as to not unnecessarily exclude existing representative bodies.

Obligations of a bargaining party

Section 46(2) outlines the obligations of an employer bargaining party. Given the size of the ECE sector meeting these obligations will present a huge amount of work and would be more than is provided for in *Section 207 Bargaining Support Services*. In addition, employer bargaining parties are required to represent the interests of employers who are not financial members.

We submit that further support, including financial support will need to be provided to employer bargaining parties to ensure they remain sustainable.

Use of "normal hours"

The mandatory contents of a FPA as listed in *Section 114* includes 'normal hours' - S114(1)(c). It should be noted that most employment agreements provide for 'ordinary hours' (the hours which can be worked without payment of overtime, for example, 40 hours per week). In the Interpretation (*Section 5)*, overtime refers to hours worked in excess of a person's normal working hours, rather than hours worked in excess of the ordinary hours set by the agreement.

This could be an issue in the ECE sector (and other sectors) where there are a lot of part time teachers or workers whose normal hours are less than the ordinary hours prescribed. The unintended consequence of this could be a requirement to pay overtime to a part time employee who is working 22 hours instead of their usual 20 hours in a week.

We submit that the mandatory contents should refer to "ordinary hours" rather than normal hours, and that the interpretation of overtime should refer to hours worked in excess of ordinary hours, rather than hours worked in excess of normal hours.

Section 155 states where there is overlapping coverage of FPAs, the employee will be covered by the one with better terms. This removes certainty from employers and their ability to budget wage costs.

For example, an ECE centre employs teachers and cooks. All employees are covered by a FPA for the ECE sector as an industry. As the ECE centre employs a cook, a year later, they come under a new FPA covering cooks as an occupation. The FPA covering cooks is found to have better terms, so this prevails. The employer will now have to meet the new requirements for the cook which could include a much higher pay rate which wasn't budgeted for meaning the ECE centre may no longer be able to afford to employ a cook. This has implications for the centre, the cook, and the tamariki attending.

We submit that the provisions relating to overlapping coverage should be removed, with no option to initiate a new FPA with coverage that overlaps an existing FPA.

Make submission by 19 May 2022.

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