



19 May 2022

**The Education and Workforce Committee**  
**Parliament Buildings**  
**Wellington**

## **ComVoices submission on the Fair Pay Agreements Bill**

Online submission

Thank you for the opportunity to offer our feedback on the Fair Pay Agreements Bill, and the framework it proposes to provide for collective bargaining for fair pay agreements across entire industries or occupations.

### **Who we are:**

ComVoices is a network of 23 peak bodies working nationally and regionally across the community and voluntary sector. We amplify the voices of Aotearoa's community and voluntary sector so that we influence decision-makers. Our vision is confident, connected communities served by a valued and collaborative community sector. We promote the value that community and voluntary sector organisations add to Aotearoa New Zealand's economic and social wellbeing. We provide a collaborative platform so that members of ComVoices can encourage the development of a policy and regulatory environment that is supportive of sector organisations and their communities and can provide effective responses to the New Zealand Government on emerging issues.

This submission was developed with support and input from our members and reflects the views from a broad section of the community and voluntary sector. A list of members and organisations endorsing this submission can be found at the end of this document.

### **Comments on the Bill**

ComVoices supports Fair Pay Agreements in principle because they will give both employers and workers the flexibility to create together minimum standards best suited for their industry. This can correct conditions and elements of employment that over years have led to worsening inequality, impacting negatively on our members' workforces and the communities they serve.

However, we have concerns that the Fair Pay Agreements Bill (the Bill) as written does not serve this principle well for many of our members and their workforces. We submit our concerns and recommendations, urging the Select Committee to recommend revisions to the Bill before this important legislation is passed.

Our submission is based on supporting two principles:

- Specifically, the need for improved recognition of workplace conditions and protection of workers' pay in the social, health and community sectors. Many of these kaimahi are working within not for profit organisations that are not adequately funded to provide pay levels commensurate with workers' qualifications and skills, and in ways that value the labour these workers provide.

- Protection of workers' pay in the general workforce who fall outside negotiated/collective agreements.

We wish to make the following points:

### **1. Clarify and simplify purpose**

The 'Purpose' of the law is not clear enough. We suggest it be simplified so that it makes clear the Bill is meant to improve labour conditions and ensure all employers deliver decent work and pay that reflects the work done to their employees.

We also note and are concerned that the Bill is unnecessarily complicated and lengthy. We recommend this be simplified for ease of interpretation and operationalising of the Act.

### **2. Pay Equity in the Funded Sector**

The release in November 2021 of the Cabinet Paper, Pay Equity in the Funded Sector<sup>1</sup> was a significant milestone for the not-for-profit sector (the sector). Government recognised the unique position of the sector, in that it is largely reliant on government funding to pay its workforce to deliver the services that government commissions it to deliver. This includes, for example, the full range of social services support for children, rangatahi, families and whānau. The subsequent decisions made by Cabinet in relation to pay equity for the funded sector seek to address the barriers and pre-existing concerns currently faced by the funded sector to achieving and delivering pay equity. The amendments to the funded framework made as a result of these Cabinet decisions attempt to resolve the current gender and pay imbalances experienced by the funded sector. In practice, these seek to improve how future pay equity claims in the funded sector will be managed. Ultimately, government has recognised the unique position of the funded sector, in that equitable pay cannot be delivered without adequate government funding for the funded sector – including social services. We are concerned that a new Fair Pay Agreements system might result in increased compliance costs and direct employee costs in an already underfunded sector. Careful consideration of how these different but related systems will work together is necessary in the context of this Bill.

### **3. Bargaining support services**

The Bargaining support services provisions in the Bill need to be strengthened to ensure that employers in the sector are fully supported, and to minimise potential unintended consequences resulting in excessive costs being incurred (associated with engagement in Fair Pay Agreement processes). The Fair Pay Agreements Bill places bargaining obligations on bargaining parties based on the duty of good faith obligations within the Employment Relations Act. Whilst we support bargaining processes as set out in the Bill, we are concerned that these will potentially result in significant unfunded bargaining costs being incurred by the sector. This would impact on the long-term viability and sustainability of this sector. There should be consideration for provisions in the Bill to fund bargaining costs for the sector.

The Fair Pay Agreements Bill has provisions for an employer association to bargain on behalf of employers. The employer association requires at least one member that is a covered employer. We have concerns that many not-for-profit organisation may not be members of an association for the purposes of bargaining for a proposed FPA and fair pay agreement. Such requirements impose unnecessary barriers for those in the not-for-profit sector who cannot afford to be members of an employer association. Further, the Bill proposes that the employer association may join an employer bargaining side after it has been formed. We are concerned that the not-for-profit organisations run

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<sup>1</sup> Cabinet Paper – Pay Equity in the funded sector 8 November 2021

the risk of being at arms length and therefore being bound by agreements reached for which they have had no say in.

#### **4. A Fair Pay Agreements Act will not exist in a vacuum – capacity of the not for profit sector to recruit and retain skilled workforce and ‘pay fair pay’ is seriously undermined**

We support FPAs as long as the outcome of such agreements are funded in the sector, as they are with pay equity settlements. The funded sector pay equity commitments made by Government (see the Cabinet paper and subsequent decisions mentioned above) are a vital precedent in this regard.

We point out that the ability of the sector now and in the future to recruit and retain a skilled workforce is undermined because of chronic shortfalls in funding and other inhibiting conditions which need to be urgently addressed.

- Prior to the pandemic, the social sector was independently assessed to be annually underfunded by \$630m.<sup>2</sup>
- The independent assessment identified that the workforce is underpaid and overworked with a growing wage differential between providers and the government sector. This includes both frontline and back-office staff. The assessment noted that in essence workers are ‘paying’ for the funding gap through low wages.

As an example, the pay differential between community-based social workers and Oranga Tamariki social workers who had won a successful pay equity claim was estimated to be around 30% in 2019, this gap continues to increase over time. Social service providers around the country have reported losing many social workers to Oranga Tamariki following the public sector rise in pay.

Martin Jenkins also noted ‘a significant proportion of providers can operate only because they rely on underpaid frontline staff who are motivated by strong social ethics’<sup>3</sup>. Staff, who do not work on the frontline but who are crucial to the successful running of community-based social service, are also underpaid, performing a broad range of responsibility (eg CEO duties, finance human resources and IT) for low or moderate salaries.

Fallout from dealing with the Covid-19 pandemic and inflation are further stressing the sector (as it is in other industries), with greater movement of employees and expectations of improved salary and working conditions.

All of these factors mean service delivery is becoming harder to achieve and providers are finding it hard to fulfil contractual obligations.

These combined factors mean that there is considerable pressure being felt within the sector, and providers, such as social service providers, are significantly stretched as they seek to meet demand through provision of effective, timely and professional service provision.

Funding levels need to be funded appropriately to recruit and retain skilled staff. It would be unacceptable that groups of workers in the not-for-profit sector would have to resort to the mechanism of a Fair Pay Agreement because their employers can’t afford to pay them appropriate wages and salaries.

Our members have two current examples of the impact upon the sector, that are national in scope:

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<sup>2</sup> Martin Jenkins (2019), Social Service System: The Funding Gap and How to Bridge It. Research funded jointly by social service providers and philanthropic organisations.

<sup>3</sup> Martin Jenkins (2019) page 53

- The nursing pay equity settlement reached between DHBs and their nurse employees, that leave nurses entering the job market with no reason to work in sectors such as Aged Residential Care (ARC) or mental health and addiction (MH&A), not covered by the settlement, even though there is a dire shortage of nursing staff in these sector. For-profit providers of ARC or MH&A may be able to compete with the DHBs to retain nursing staff, but without higher funding from the Ministry of Health or other government funders, not-for-profit providers are left paying nurses less and subsequently, are already among the first to start closing their doors as the shortage of nurses across New Zealand prevails.

Not-for-profit providers must be funded as part of this negotiation when it takes place, or New Zealand faces a serious risk of service closures, and less choice of health services in future.

- The pay equity claim for people doing social work in the community-based social services sector, lodged in 2019. This claim is currently being negotiated between five employers and their employees. One of our members, Social Service Providers Aotearoa (SSPA), is the coordinating organisation for the five employers involved in the claim, and is working constructively with the PSA, Te Kawa Mataaho and Oranga Tamariki as the lead funding agency in the claim (which also involves multiple funders, given the nature of the work undertaken by the five organisations in the claim). SSPA and the five employers are seeking two key outcomes through the pay equity claim: firstly, to reach a pay equity settlement that aligns pay for people in social work roles in community providers with Oranga Tamariki social workers; and secondly, to extend the benefits of any such pay equity settlement to others in similar roles in the community social services sector. The funded sector framework provides for government to understand the costs of a settlement, and to make decisions regarding funding based on the information it receives. Therefore, achieving the two outcomes in this claim is dependent on Cabinet decisions regarding settlement of the claim, and decisions to extend the benefits of any such settlement to people doing social work across the wider community social sector.

There is very little awareness of the range of qualified workforces that exist alongside their social worker colleagues inside the social service sector and which face fair pay disparities with colleagues who are government or private employees. This sector is overwhelmingly not-for-profit and contracted to perform the work they do for New Zealand's communities and hapori. It is likely that more of this sector's workforces may in future choose to organise to negotiate a Fair Pay Agreement, our members – their employers – will hope to support them and be part of that negotiation process, and be able to materially meet terms and conditions through realistic funding being provided by government.

##### **5. Protection of workers' pay in the general workforce who fall outside negotiated/collective agreements.**

We support the Fair Pay Agreements Bill as providing a cornerstone of protection for employees who find themselves in precarious working circumstances, as the explanatory note to the Bill notes:

*These include a significant prevalence of jobs with inadequate working conditions, low wages, and low labour productivity. For example, Māori, Pacific peoples, young people, and people with disabilities are over-represented in jobs where low pay, job security, health and safety, and upskilling are significant issues.*

Our own members and other organisations providing social and community services are well aware of the impact of these circumstances on individuals, families and whānau, where people struggle to pay for basic necessities such as rent, food, transport, education and health needs. Consequences include going into debt from which it is very difficult to get out of and poorer health and wellbeing

than people who have the benefit of decent pay, pay progression and safeguarded working conditions.

We note that the sector is characterised by many small and medium sized provider organisations, with often small numbers of workers. Combined with factors such as the existence of few collective employment agreements and low rates of unionisation, this means that the protections offered to workers by FPAs will be valuable, as long as adequate funding is made available to support this in practice.

#### **6. The legislation should include contractors**

We urgently recommend for the legislation that proposed work signalled by the Government on inclusion of contractors into FPAs proceed with haste. We note that penalties will apply to employers who seek to avoid the coverage of FPAs by engaging workers as contractors when they are employees under the law.

#### **7. There should be no exemptions of business or employers from the legislation**

We do not support exemptions for any businesses under the Fair Pay Agreements Act. We support the principle of minimum pay and conditions becoming consistent by the Act across the whole country, without district variations or exemptions of any kind. There should be no exemptions for businesses that are in significant financial hardship. There are other supports available for businesses under this condition, and such businesses should not be granted any benefit from the hardship of their employees.

We note in the present economic climate, with inflation and a shortage of supplies during a global pandemic outbreak, all workers' pay is not increasing at the same rate as the cost of living. We wish for this Select Committee to acknowledge this and urge government to recognise the need for increase of workers' salaries everywhere, particularly as an employer, who procures and commissions services.

#### **8. Include health and safety, education, training and leave as 'mandatory to agree' topics**

Our members agree it is not enough for these four critical components of working conditions to be mandatory only to discuss. The health and safety of staff at work, their professional development and training, and the conditions of taking their leave are all core rights of the workforce, needing suitable investments by employers. Fair Pay Agreements should include agreement on these workplace conditions.

#### **9. Impact on pay parity**

Due to longstanding inability of workers' salaries to meet costs of living, we are aware that many sectors of workers may not have any means to organise at this time. We are concerned that Fair Pay Agreements will be negotiated among sectors with the most resources and the least need among workforces, before they are negotiated by those that need salary increases the most.

Our concern extends in this regard to the Bill's potential impact upon pay parity between occupations. Fair Pay Agreements for one occupation may have flow-on impacts for others, while some workforces reach agreements that raise salaries significantly.

#### **10. Introduction of a new backstop**

We support making the default bargaining party role voluntary instead of mandatory and the introduction of a new backstop and the conditions as to when this would be triggered as outlined in

the Parliamentary paper: Proposed policy change to the Fair Pay Agreements Bill that was submitted on 31 March 2022.

### **In conclusion**

We thank the Select Committee for this opportunity to note our concerns and recommendations for ways to improve this Bill. As currently drafted, we believe it may worsen conditions or impact negatively upon some workforces, while it excludes contracted not-for-profit employers and thereby frees government from its funding responsibility to their workforces. As we began, we give our support in principle to New Zealand legislation of Fair Pay Agreements, but we must insist as written it may cause more inequity among workforces than it resolves.

I wish to speak to this submission, on behalf of ComVoices.

Sincerely

Dr Prudence Stone  
Chair, Comvoices

This submission is endorsed by:

Ara Taiohi  
Atamira | Platform Trust  
Community Housing Aotearoa  
Community Networks Aotearoa Incorporated  
Council for International Development  
Hui E! Community Aotearoa  
New Zealand Council of Christian Social Services  
SocialLink  
Social Service Providers Aotearoa  
Volunteering New Zealand