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Seventeenth sitting, 8 June 2022, 10.42 a.m.
Dix-septième séance, 8 juin 2022, 10 h 42
Decimoséptima sesión, 8 de junio de 2022, 10.42 horas

Chairperson: Mr Topet
Président: M. Topet
Presidente: Sr. Topet

Discussion of individual cases *(cont.)*
Discussion des cas individuels *(suite)*
Discusión de los casos individuales *(cont.)*

New Zealand (ratification: 2003)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Convention (nº 98) sur le droit d'organisation et de négociation collective, 1949
Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98)

El Presidente – Vamos a dar comienzo a la sesión del día de la fecha en la que examinaremos los siguientes casos individuales: Nueva Zelandia, Convenio sobre el derecho de sindicación y de negociación colectiva, 1949 (núm. 98); Benin, Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182); Países Bajos, Sint Maarten, Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87), y Liberia, Convenio núm. 87.

Antes de empezar las labores de esta mañana, me permito recordarles, a los miembros de la Comisión, que lo indicado en el documento D.1, parte 6, que se proporcionará una copia de las conclusiones al representante gubernamental interesado en uno de los tres idiomas de trabajo elegidos por el Gobierno.

Habida cuenta del formato híbrido de la reunión, este año los proyectos de conclusiones se transmitirán a una persona designada por el Gobierno interesado unas horas antes de la adopción del texto.

La secretaría envió una comunicación a las delegaciones concernidas solicitando esta información. Les pido que respondan lo más rápido posible para facilitar el trabajo de la Comisión.

Los representantes gubernamentales podrán intervenir después de que la presidencia haya anunciado la adopción de las conclusiones con un tiempo de palabra limitado a tres minutos.

Informo también a la Comisión que las 11 primeras conclusiones que serán adoptadas en la tarde del jueves 9 de junio corresponden a los primeros casos individuales examinados por la Comisión, a saber: Malawi, Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111); Myanmar, Convenio núm. 87; Azerbaiyán, Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105); República Centroafricana, Convenio núm. 182; China, Convenio núm. 111; Hungría, Convenio núm. 98; Ecuador, Convenio núm. 87; Fiji, Convenio núm. 105; Djibouti, Convenio sobre la política del empleo, 1964 (núm. 122); Nicaragua, Convenio núm. 87 y Kazajstán, Convenio núm. 87.

Las otras 11 conclusiones serán, por consecuencia, adoptadas en la mañana del viernes 10 de junio.

Vamos a empezar ahora con el examen de los cuatro casos individuales previstos. El primer caso de esta mañana se refiere a la aplicación del Convenio núm. 98, por Nueva Zelandia.

Para la discusión sobre este caso contamos con 16 oradores inscritos para hacer uso de la palabra. Invito al representante gubernamental de Nueva Zelandia, Sr. Michael Hobby, a que tome la palabra.

Government member, New Zealand (Mr HOBBY) – New Zealand has not appeared before this Committee for many years, but we welcome the opportunity to do so. We are fully supportive of the role of the Committee of Experts and this Committee in the administration of the supervisory system, and note the purpose of our appearance today is to provide further information to the Committee about the Fair Pay Agreements system, its objective and aims. We look forward to providing the Committee with the information it requires, and, in due course, learning of its conclusions.

I would like to start by setting out the broader context for Fair Pay Agreements (which we refer to as FPAs), and how the FPA system interfaces with the Convention.

First, the FPA system is a result of a long, considered and inclusive policy process. It is also subject to further change and development as the legislative process continues over the course of this year.

The key building blocks of the FPA system are based on the recommendations of a tripartite working group, which fully considered the state of New Zealand's labour market and employment systems in terms of collective bargaining outcomes. These systems have generally performed well in creating jobs, ensuring high rates of participation, and delivering

some elements of job quality. However, there are masked and entrenched weaknesses, and the gains have not been equally distributed.

In the 1990s, New Zealand moved from a centralized bargaining system to a fully decentralized one, based on individual and enterprise-level bargaining. Collective bargaining coverage used to be around 70 per cent, but has dramatically declined to around 17 per cent since then. Multi-employer bargaining, which used to cover over 90 per cent of the private sector workforce, fell to 16 per cent in two years.

Since then, and despite subsequent reforms, there has been increasing evidence of a "race to the bottom" in some sectors. A dramatic fall in unionization rates, a lack of sectoral bargaining, both enable businesses to undercut their competitors through low wages, or by shifting risks onto employees without corresponding compensation. Because there is little multi-employer or national collective bargaining, wages come under pressure, and employers have fewer incentives to innovate or raise productivity. This is because they can increase profits by simply reducing wages, rather than adopting other strategies.

Consequently, we have seen a rise in low-paying jobs and poor working conditions. These jobs have not provided working people with sustainable full-time employment or the opportunities to advance. The impacts are evident in New Zealand's stagnating productivity and wage growth, and the gap between them.

The drive for labour market flexibility has also seen increased casualization of work and the growth of labour hire practices, with reduced protections and rights for workers.

These outcomes also disproportionately affect specific population groups such as Māori, Pacific peoples, young people, and people with disabilities, who are over-represented in jobs where low pay, poor health and safety practices, low job security and limited upskilling are significant issues.

Paradoxically, New Zealand employers currently face skills shortages, and are under pressure to hire workers and retain staff. With such a tight labour market, workers should be well positioned to bargain for better employment terms. Despite this, we see a persistent lack of bargaining power for workers in some sectors.

While all of these factors and weaknesses have drivers outside the labour market, the Government considers the regulation of employment relations to be a key factor. Employment terms in New Zealand are primarily negotiated at an individual level, where there is an inherent imbalance of power between employers and workers. Collective bargaining is primarily conducted at the enterprise level. This has led to under 20 per cent of workers being covered by collective agreements, with unionization around 17 per cent.

Our system does not promote effective multi-employer, or occupational, or cross-industry bargaining at levels that might meaningfully reduce the negative effects of:

- low wages and wage growth;
- the decoupling of wages from productivity growth;
- poor labour practices;
- vulnerability; and
- an over-reliance on statutory minimum conditions as the norm, rather than bargained floors of minimum terms and conditions.

This has been our experience over the last 30 years.

To address these issues, a tripartite working group recommended an approach to developing a sectoral bargaining system in New Zealand. They noted it was not possible to simply "lift and shift" the sectoral bargaining models used in other countries, because of our particular labour market circumstances and history. The FPA system is based on what the working group recommended, and the current Fair Pay Agreements Bill reflects our particular situation and the factors that have led to it.

A key aim of the FPA system is to drive enduring, transformational change benefiting workers – particularly those in low-paid jobs, or in sectors where collective bargaining does not presently exist or, if it does, is not effective.

FPAs are intended to create a step change following over 30 years of individualized and firm-level bargaining. They will do so by enabling new minimum terms at the industry or occupational level to be set through a process of collective bargaining which may then be improved upon by either further collective or individual bargaining.

The level playing field provided by FPAs should support firms to improve workers' terms and conditions without fear of being undercut on labour costs by their competitors, and create incentives to increase profitability or market share through increased investment in training, capital formation and innovation.

We think that FPAs should also improve outcomes for vulnerable workers, in particular those such as Māori, Pacific peoples, young people, and people with disabilities, who disproportionately experience poor labour market outcomes.

It is important to emphasize this, the FPA system will not replace our current system of collective bargaining under the Employment Relations Act (ERA), it will supplement it. The specific features of the FPA system will apply only to bargaining conducted under that system and not more generally.

I turn now to points raised by the Committee of Experts and others on FPAs.

In terms of initiation, some issues have been raised about how bargaining for an FPA can be started. FPAs can be initiated two ways.

The first is a pathway through representation where support will be needed from at least 1,000 workers or employers, or 10 per cent of covered workers or employers. While this may be lower than in other countries' systems, this reflects our relatively low levels of union density and collectivization. Setting higher representation thresholds would effectively mean this pathway could not be used.

However, a second pathway is through meeting a public interest test, with statutory criteria that are assessed by an independent regulator. These criteria will include that the workers concerned receive low or inadequate pay, or have little bargaining power in their employment. The regulator will be able to hear evidence and submissions from interested parties. The administration of legislative frameworks for collective bargaining by a competent authority is a common and necessary feature of bargaining systems generally.

Given the purpose of FPAs, the Government considers that it is appropriate that workers, through unions, can initiate FPA bargaining and propose coverage for the first time. Bargaining for subsequent FPAs in the same occupation or industry however can be triggered by either employers or workers.

In terms of coverage, FPAs will apply to all employers and workers within the specified occupation or industry. The extension of bargained outcomes to employers and workers not directly involved in the original bargaining is again not a unique feature of FPAs, and is also

recognized in Article 5 of the Collective Agreements Recommendation, 1951 (No. 91). The Committee of Experts has found that the extension of collective agreements per se is not inconsistent with the Convention.

We know that if the minimum terms resulting from FPAs did not apply to all workers and employers within coverage, they would not achieve their objective of improving labour market outcomes by preventing undercutting and competition on the basis of reducing labour costs.

Again, we emphasize the point here is to create and set minimum terms and conditions across a sector or industry.

Ultimately, as I say, the objective of FPAs is to set these minimum terms and conditions for work in occupations or industries where these cannot be effectively bargained for at present. A collective bargaining process best enables the key issues to be identified, negotiated and hopefully agreed, but this may not be possible. The fixing of FPA terms needs to be seen in this context.

The fixing of terms is not the first recourse when parties encounter difficulties during bargaining. When disputes arise, the parties will have access to independent mediation. If mediation does not resolve the issue, a party may apply to an independent tribunal – the Employment Relations Authority – for a non-binding recommendation. If parties decide not to accept the recommendation, either of them may apply to the Authority for a binding determination that fixes the terms of the FPA.

When fixing those terms, the Authority will be required to first consider what attempts have been made to resolve the dispute. The Authority may direct further mediation, or another process to try and resolve the dispute. Only if all other reasonable alternatives have been exhausted, or a reasonable time period has elapsed, will the Authority then be able to fix the terms.

This is intended to encourage the parties to work through their issues to achieve an agreed outcome if at all possible, reflecting the importance of the broader social outcomes sought by FPAs, and the fact that ultimately, it may not be possible to lift minimum terms and conditions across entire occupations or industries without a mechanism to fix terms if bargaining has reached a stalemate.

The Government notes that the supervisory bodies have found fixing terms is permissible in specific circumstances, including “when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities”. Given the FPA system will introduce a new form of collective bargaining to New Zealand, the Government also notes the Committee of Experts’ comments in its 2012 General Survey on arbitration in cases of a first collective agreement.

There has been one development since we provided our last report to the Committee of Experts in 2021 and that is the introduction of a backstop component to the legislation.

Earlier this year, the Government proposed a change to what happens if the threshold to initiate FPA bargaining had been met, but only one side was available to bargain collectively. If this happens, the tripartite partners will first be given the opportunity to step into bargaining on behalf of either workers or employers, depending on where the gap is. If this is not possible, however, bargaining will not take place. Instead, the independent Employment Relations Authority, will set the relevant minimum terms and conditions.

This reflects the Government's view that if the statutory conditions for setting sectoral minimum standards have been met, this should not be prevented by an inability for collective bargaining to take place.

To conclude, I would like to reiterate that:

The objective of the FPA system is to enhance workers' terms and conditions, where the current collective bargaining system has failed to do so. This addresses 30 years of decentralized and fragmented bargaining, and consequently poor labour market outcomes for groups of workers.

These proposals were designed to remedy those gaps, through a long process of tripartite consultation.

Ultimately, this system is about setting minimum terms and conditions for work in certain sectors or industries through collective bargaining, insofar as is possible.

FPAs are intended to supplement, but not replace, the current collective bargaining system in New Zealand – which is retained and will continue to operate. FPAs are instead about addressing a particular problem. Beyond this, the existing collective bargaining framework will exist without change.

The legislation for FPAs is currently being scrutinized by a parliamentary select committee, and is subject to change before it passes.

We look forward to hearing the perspectives raised in this discussion. We will carefully consider any comments made by the Committee in its final report.

Worker members – This is the very first time our Committee is discussing the application of the Convention with respect to New Zealand, and New Zealand ratified the Convention in 2003.

Before the Employment Contracts Act (ECA) came into force in 1991, New Zealand relied primarily on collective bargaining and awards to set minimum standards. Overnight, the country's centralized industrial relations system was replaced with a system based on individual employment contracts. In the four years following the introduction of the ECA, collective bargaining coverage halved, falling from about 60 per cent to 30 per cent. Trade union density also declined from 46 per cent to 21 per cent in that period.

Today, collective bargaining coverage stands at 15 per cent with union density at 18 per cent, making New Zealand one of the only three countries in the OECD to have higher trade union density than collective bargaining coverage.

From 1989 to 2021, labour productivity across the New Zealand economy outpaced wages by 76 per cent. The enterprise-based ECA significantly constrained workers' bargaining power and in doing so affectively delinked productivity growth from wage growth. It is therefore no coincidence that during this period New Zealand experienced one of the largest increases in income in equality across the Organization for Economic Co-operation and Development (OECD). It is against this backdrop that we welcome the Government's legislative initiatives to encourage and promote collective bargaining in line with Article 4 of the Convention.

We note with satisfaction the proposed measures under the Screen Industry Workers' Bill which will ensure that all film and television workers, irrespective of employment status, can fully enjoy their rights under the Convention.

Regarding the amendments to the Employment Relations Act (ERA) made in 2018, we welcome the revisions to sections 31 and 33, which strengthen the duty to bargain in good

faith, and these amendments require the bargaining partners to conclude a collective agreement, unless there is a genuine reason based on reasonable grounds.

We note too, among other things, that these amendments are aimed particularly at deterring situations where a party is simply in principle ideologically opposed to bargaining, or whether it only engages in surface bargaining.

These provisions do not make settlement mandatory, as good faith bargaining may not always result in a collective agreement. However, it is evident that if the parties are negotiating in good faith, they should be able to provide genuine reasons for not being able to conclude an agreement. As the Committee of Experts has previously noted, the duty to bargain in good faith does not imply an obligation to reach an agreement, but it does contemplate various obligations on the parties, including, endeavouring to reach agreement, and avoiding unjustified delays in negotiation. Therefore, we believe that the new genuine reason test sufficiently codifies in law the good faith duty under the Convention.

Turning to Article 50J of the ERA, we understand that this provision permits the courts to fix the terms of a collective agreement where the bargaining parties have not been able to conclude.

The Government states that this section provides a specific remedy of last resort for a grave breach of the duty of good faith. In such cases the Employment Relations Authority may make a determination fixing the provisions of the collective agreement if five prescribed conditions are met, including whether the breach was sufficiently serious and sustained as to significantly undermine bargaining.

The provision has only been relied on once in 15 years. In that particular case, the union initiated bargaining in October 2013 and the authority fixed the agreement in June 2018. The authority and the court accepted that the employer had met the test of section 50J for a serious and sustained breach. The union tried direct bargaining, mediation, facilitation and even litigation to settle this agreement. The employer obstructed continuously for five years. This case perfectly demonstrates why the intervention of the Court as a last resort is needed to address improper practices in collective bargaining. Indeed, as previously held by the Committee of Experts, compulsory arbitration is permissible under the Convention whereafter protracted and fruitless negotiation it becomes obvious that the deadlock will not be broken without some initiative by the Authorities.

Let me now consider Fair Pay Agreements. The Fair Pay Agreements Bill was introduced into Parliament on 29 March 2022 and is now going through the parliamentary process. The system proposed under the Bill will bring together employers and unions within a sector to bargain for minimum terms and conditions for all employees in that industry or occupation.

It is aimed at promoting collective bargaining, especially for low-paid and vulnerable workers where union representation has been particularly low. The design of the FPA system was informed by the recommendations of the FPA working group, a tripartite body. The working group was particularly concerned with the race to the bottom within the economy in the absence of adequate minimum standards. Having considered various models the tripartite working group recommended a system that suits New Zealand’s unique social and economic context.

We see that the eventual introduction of FPAs as a welcome affirmative measure allowing for the possibility to bargain at upper levels. In doing so, the Government is fulfilling its obligation to proactively to promote free and voluntary collective bargaining under the Convention. FPAs will complement the current system of enterprise level of bargaining.

As regards the initiation of a FPA, either party can and will initiate FPAs except only in the first instance where only trade unions can do so. This provision reflects long-standing national practice. Unions can initiate the FPA process by meeting a representation threshold of support from 10 per cent or 1,000 workers in coverage or a public interest test conducted by the Authority, an independent body.

In view of the low union density in countries these thresholds would meet any test for sufficient representation status. Noting the Committee of Experts' comments on this issue, we trust that the Government will engage in meaningful dialogue with the social partners to consider any open questions relating to the initiation of FPA negotiations.

Indeed, the FPA bargaining machinery is set up precisely to facilitate good faith negotiations with a view to concluding an agreement. Strikes are not permitted under the FPA system and the FPA Bill requires the Authority to provide comprehensive bargaining support services to support fair pay relationships. On that basis it is evident that the determination of an FPA by the Authorities is only possible as a last resort and only where a deadlock cannot be broken without some initiative by the Authorities. Indeed, without the possibility to call industrial action, an external intervention maybe the only option to break a deadlock. Similar to situations where compulsory arbitration is deployed to resolve disputes in essential services where strikes are prohibited.

Once an FPA is adopted it applies to the entire agreed sector or occupational group. Given the overall aim of the FPA system, it is clear that the absence of any procedure for extension could result in two categories of employees. Some of them covered by the Agreement and others not, leading to unfair wage competition.

Recommendation No. 91 clearly stipulates several principals for the extension of collective agreements, a common practice in multiple jurisdictions, including my own. Therefore, we welcome the fact that FPAs will essentially be declared *erga omnes* for both organized and non-organized employers and employees within the Agreements reach. We trust that the Government will accept observations by employers and workers to whom the agreements will be made applicable.

To conclude, if signed into law and implemented effectively FPAs will finally raise standards for thousands of workers in sectors plagued by low pay, poor working conditions and other vulnerabilities. Companies will also benefit from stronger sector wide coordination. FPAs can lead to an upward trend in relation to wages and conditions with no employer being able to undercut their competitors on labour costs.

Employer members – New Zealand has ratified Convention No. 98, back in 2002 and the Committee of Experts has issued only two observations on the Government of New Zealand's application of the Convention in law and practice in 2006 and most recently in 2021. Turning to the Committee of Experts' observations, the Employers' group takes note that the Committee made comments on four issues in this case. The Employers' group will not comment on the first issue regarding the scope of the Convention or the last issue regarding COVID. In our view, these issues are not relevant for the proper discussion of the heart of the matter at this case.

The Employers consider the importance of this case focuses on the issue of collective bargaining and Fair Pay Agreements. By way of context, as has been referenced by the other speakers, New Zealand introduced the Fair Pay Agreement Bill 2022, to override the Employment Relations Act. The new Bill proposes establishment of Fair Pay Agreements (FPAs) as we have heard them refer to, which will cover an entire industry or occupation. More

importantly, the Bill introduces a system of collective bargaining in which individual employers have no control over the scope, coverage, or conditions of employment of workers that are their own employees.

On the first issue of Article 4 regarding the promotion of collective bargaining and the voluntary nature of collective bargaining, the Employers recall that Article 4 provides measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations with the view to the regulation of terms and conditions of employment by means of collective agreements.

The Committee noted the detailed observations made by Business New Zealand (BusinessNZ) and the International Organisation of Employers (IOE) indicating sections 31, 33 and 50J of the Act, force parties to conclude a collective agreement and that the introduction of FPAs will effectively remove the right of freedom of association and to bargain collectively for employers who will be compulsorily covered by employment agreements for employees, negotiated by organizations of which they are not a member. In particular, sections 31 and 33 require a union and employer bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason based on reasonable grounds not to. Furthermore, section 50J permits the courts to compulsorily fix the terms of a collective agreement where the bargaining parties cannot reach an agreement.

The Employers consider that it is clear that both of these provisions impose the duty to conclude and constitute compulsory arbitration upon the parties contrary to the free and voluntary principle under Article 4 of the Convention. We note that the Government has argued that the amendment to sections 31 and 33 was to ensure that parties genuinely attempt to reach an agreement, but will not have to settle if the reason not to do so is based on reasonable grounds. The Government also noted that section 50J does not apply simply when the parties cannot reach agreement over a particular matter or more generally. The Government indicated that section 50J provides a specific remedy of last resort for a serious and sustained breach of the good faith requirement.

The Employers consider that a requirement to conclude a collective agreement clearly constrains the voluntariness and removes it entirely if not able to demonstrate the genuine reason criterion can be met. Furthermore, these provisions do not provide an employer the necessary flexibility to bargain collectively. Once bargaining is initiated, the process mandated by the good faith obligations must be followed to its logical conclusion no matter how many or few employees may be affected by the outcome.

Ensuring the voluntary nature of collective negotiation is inseparable from the principle of negotiation in good faith if the machinery to be promoted under Article 4 of the Convention is to have any meaning.

In this regard, the Employers call on the Government of New Zealand to review and amend without delay these provisions in consultation with the most representative employers' and workers' organizations with a view of ensuring that these provisions fully respect the right to bargain collective in a free and voluntary manner as enshrined and protected in Article 4 of the Convention.

Regarding the second issue, referencing Fair Pay Agreements the Committee noted that the introduction of Fair Pay Agreements covers all employees in an industry or occupation and only allows a union to initiate bargaining processes. In essence, it does not provide employers

any ability to opt out of these agreements and any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed.

The Employers' group notes that the Government has argued that the aim of the Fair Pay Agreements is to create a new bargaining mechanism to set binding minimum terms at the industry or occupation level. The Government has argued that these will help build on national minimum standards and provide a new floor for enterprise level collective agreements where a Fair Pay Agreement has been concluded, thus improving outcomes for employees with low bargaining power.

The Employers' group notes that compulsory arbitration in the case where parties have not reached agreement is generally contrary to principles of collective bargaining. Compulsory arbitration is only acceptable in certain specific circumstances, namely essential services in the strict sense of the term; in the case of dispute in the public service; and/or when after protracted and fruitless negotiations; or in the event of an acute crisis.

The Employers consider the Fair Pay Agreement Bill deeply concerning, in that it allows the Government of New Zealand to oversee an entire process of collective bargaining. In effect, this Bill will arbitrarily impose collective bargaining outcomes on hundreds, if not thousands of employers and their employees, whether or not they seek such coverage or are represented by a union or employer organization. In particular, the requirement for compulsory arbitration when no agreement can be reached by the parties is unduly broad and undermines the principle of free and voluntary collective bargaining protected by the Convention.

Therefore, the Employers urge the Government of New Zealand to provide the Fair Pay Agreement Bill to the Committee of Experts so that it may be reviewed. The Employers also urge the Government of New Zealand to review and amend, without delay, the Fair Pay Agreement Bill, in consultation with the most representative employers' and workers' organizations to ensure that it is in fact in full compliance with the provisions in the Convention.

I will conclude by noting that the breaches of the Convention – in our view – are serious and significant, and in fact, the Government of New Zealand, in its own documents openly acknowledged that it intends to breach this ILO fundamental Convention in the introduction of this legislation and has delayed its responses for their actions to the ILO. Furthermore, the proposed Fair Pay Agreement process tramples on workers' and employers' rights of freedom of association and undermines the principle of free and voluntary bargaining enshrined in the Convention.

Worker member, New Zealand (Mr WAGSTAFF) – I want to start by emphasizing that Fair Pay Agreements, or FPAs, as we call them, will not be a replacement for, and do not interfere with, regular collective bargaining or individual bargaining in New Zealand. These are not overwritten as the previous speaker suggested. They are quite separate, and every worker legally employed in New Zealand will continue to need to negotiate an employment agreement, as they always have, whether or not an FPA comes into existence. Nobody can be employed on an FPA because FPAs are not employment agreements, they are simply a set of minimum standards over and above which normal employment agreements are made. And, to be clear, the existing and undisturbed system of bargaining for employment agreements, under the Employment Relations Act, constitutes the voluntary form of negotiation anticipated by Article 4 of the Convention.

FPAs were informed by a tripartite working group chaired by former Prime Minister and ILO President, Mr Jim Bolger. I was a member of the working group and we quickly identified the problems inherent in our current system that is characterized by a complete absence of

any industry standards, less than 20 per cent union density and no extension mechanisms. We could see that the logic of our system drives an inevitable race to the bottom for wages and conditions as firms in an open and competitive economy compete on price first instead of innovation and quality. It became clear that employers that bargain decent collective agreements cannot compete fairly for business in an environment where there are no industry standards and no level playing field and, in this way, we could see that unions and collective agreements have become targets themselves for attack and/or are strenuously avoided by employers who seek to compete against other low wage non-union firms. Put simply, without industry standards like Fair Pay Agreements, workers, collective bargaining and good employers are all vulnerable and at risk.

Our tripartite working group took on board the OECD's recommendations in the 2018 publication entitled *The Role of Collective Bargaining Systems for Good Labour Market Performance*. The OECD recommended a model which combines firm-level bargaining over and above industry standards because if this model delivers good employment performance, better productivity outcomes and higher wages compared to decentralized systems like New Zealand currently has. So, the working group designed Fair Pay Agreements accordingly, recognizing New Zealand's unique characteristics and proposed a system that would "complement, not replace, the existing employment relations standard system".

While Business New Zealand leaders, in an unguarded moment, publicly acknowledged that FPAs will lead to higher wages, their narrative has largely been to misconstrue the nature of FPAs and confuse and conflate them with our existing collective bargaining system – and we have just heard it again from the employer. Employers keep insisting that they will lead to more strikes, even though strikes are not permitted in relation to FPAs. Business New Zealand has said that FPAs are too complicated and insist that the parties will be unable to effectively form bargaining sides. Yet, there is clear experience in New Zealand that shows the opposite is true. For example, when the Employment Court recently invited the employers and unions in the care and support industry to negotiate an industry standard for pay equality rates, we quickly, efficiently and effectively organized ourselves into bargaining sides representing over 65,000 workers, not just union members, but 65,000 workers and over 1,000 private and NGO employers ranging from multi-national companies to small family owned not-for-profit organizations and we prepared for negotiations and ratification in exactly the same way that is envisaged in FPAs and the net result was a milestone settlement that set a new floor for vulnerable woman workers in terms of pay, training and enhanced dialogue between social partners. Mind you, Business New Zealand was not involved.

Business New Zealand's position is not just confused, it is inconsistent. They have already agreed to two legal mechanisms in New Zealand that the proposal for FPAs emulate very closely, in the Screen Industry and the now amended Equal Pay Act. Both of these mechanisms involve a process that is very much like FPAs. They establish minimum standards through employer and union negotiation in the shadow of compulsory fixing and in the absence of a right to strike. Business New Zealand has even misconstrued the process, we are engaged in, and here in this room in the Committee, they publicly stated a couple of weeks ago in our biggest daily newspaper that New Zealand was on the ILO list of "worst case breaches". This was even before the shortlist came out warning the public of New Zealand that the ILO may even prosecute New Zealand.

These employer objections to FPAs do not make sense. There is nothing wrong or unusual with minimum industry standards being set that apply to everyone. That is how standards always work. To suggest minimum standards should be voluntary, and employers should be able to opt out, defeats the whole concept of standards as a nonsense. There is nothing about

the Convention which prevents ILO Member States from having laws that allow for fixing compulsory minimum standards across industries provided voluntary collective bargaining provisions are maintained as they are in New Zealand nor is there a problem with the Employment Authority fixing terms of these standards in the event of a bargaining stalemate when all other options have been exhausted. Member States have industry standards and it is time that New Zealand did the same.

Employer member, New Zealand (Mr MACKAY) – As the Employer spokesperson has said, this is a serious case. All the more so since New Zealand is a founding Member of the ILO and has long been active in upholding ILO standards.

In 2017, the Government announced its intention to introduce Fair Pay Agreements and, in March 2022, the Government introduced the Fair Pay Agreements Bill to give effect to its intention. A tripartite working party developed the framework that gave rights to the Bill however it needs to be said here, that the employer members of that group decentered with the views of the majority and do not agree with the overall outcome of that report.

The Bill clearly denies freedom of association and the right to bargain freely and voluntarily to employers and workers because: Only unions can initiate a Fair Pay Agreement. Employers have no say for the first agreement, having met the initiation criteria of either the representative test or a public interest test.

The representative test criteria of 1,000 union members, or 10 per cent of the affected workforce, are so low as to be farcical and if even these low criteria cannot be met, the union can ask for a Fair Pay Agreement on the grounds it will be in the public interest. Following an assessment, the Ministry of Business Innovation and Employment will decide if the public interest test is met, but astoundingly is not required to consult the public. By way of example, there are several hundred thousand clerical workers in New Zealand. Only one union in New Zealand has over 1,000 clerical members, and they will have unilateral rights to establish the conditions of work for potentially hundreds of thousands of clerical workers who are not their members and who will have no effective say in the matter. They cannot opt out and they cannot say they do not want to be involved. And the 29 other unions that cover clerical workers may be cut out of representing their own members.

The initiating unions decide whether the Fair Pay Agreement will be an industry or occupation document, and the scope of it.

In the absence of a suitably representative employer bargaining party, unions will be able to take their claim for a Fair Pay Agreement straight to the judicial authority which will fix the terms of a Fair Pay Agreement. In this instance, employers will not be represented at all. And there is no right of appeal against a determination.

The Bill also provides that a second failed, or no ratification vote, will refer a settlement to the judicial authority, again for determination. This makes an employer vote against a Fair Pay Agreement completely meaningless.

In further contravention of the principle of free and voluntary bargaining, the Government will control the process, making it even less free and voluntary. For instance, the Ministry of Business Innovation and Employment will approve initiation of bargaining for a Fair Pay Agreement, assist managing the process, vet any settlements and translate settlements into legislation.

Since 31 July 2019, the New Zealand Government has failed to respond to any of the ILO's repeated requests for an explanation of its actions and proposals with regard to Fair Pay

Agreements. Indeed, a response that the Government would wait for Business New Zealand to lodge a complaint before responding to any of the concerns raised over the preceding two years, suggests a deliberate strategy of avoidance.

The New Zealand Government has openly acknowledged that it intends to breach the principles of the Convention. The Government actually acknowledged, in a publicly available cabinet paper, that it will breach principles related to freedom of association, voluntary bargaining and arbitration because it considers this to be necessary to achieving its goals.

It is our view that the New Zealand Government is effectively thumbing its nose at the ILO supervisory system, because staying true to the system would thwart its aims. Aims that trample on the rights of freedom of association and the right to free and voluntary collective bargaining for individual workers and employers throughout the country. This is of very serious concern.

Any country that is not challenged when it proclaims its intent to breach a fundamental Convention constitutes a serious challenge to the integrity of the ILO supervisory machinery. New Zealand is not just any country, it is a developed democratic economy and a founding Member of the ILO. We, in this Committee, are the body that upholds the system and ensures its integrity. We must not let such a serious challenge to the system go unanswered. If we do not challenge something so deliberate, what is the point of being here?

For the sake of workers and employers throughout New Zealand, and for the sake of the continued integrity of the ILO supervisory system, we urge this house to condemn the actions of the New Zealand Government in the strongest possible terms.

Worker member, Australia (Ms O'NEIL) – Australia and New Zealand are neighbours, our bonds run deep, and we have long-standing shared histories and approaches in many areas including to workers' rights and in our systems of minimum standards and protections.

Australia's Industrial Relations framework is built on three levels. The first includes basic minimum rights in legislation and a minimum wage. The second, over 100 industry and occupational "Awards" that create minimum standards for specific industries and occupations. These Awards provide a minimum floor on matters from rates of pay, hours of work, shift work and overtime, to things like breaks, leave arrangements and rostering.

On top of this sits a third level which involves collective bargaining at the enterprise level.

In the past, Australia and New Zealand had in common a comprehensive award system providing an essential minimum floor for the vast majority of workers in both countries. Our paths diverged in 1990, when New Zealand completely abolished their award system.

When New Zealand tore up their industry-specific safety net, inequality rose, and wages fell. Lacking a set of industry based minimum standards, New Zealand workers saw their ability to negotiate employment agreements severely weakened, and consequently their standards of living worsened significantly.

Average wages in New Zealand are now significantly lower than in Australia, and this is in part attributable to the lack of a solid safety net.

By comparison, Australia has an industry-specific safety net that employers cannot opt out of, as much as they might like to. Australian workers depend on it.

Fair Pay Agreements (FPA) will fill a gap in the New Zealand system, and we fully agree with the New Zealand Government's view that the FPA scheme creates a much-needed safety net much like our modern award system.

FPAs and Awards have a lot in common, they both provide an important middle layer of protection between statutory minimum-wage fixing and enterprise-level bargaining. They both cover all workers, whether they are union members or not, and they both include provisions for a comprehensive set of terms and conditions.

There is an important difference. FPAs place a greater emphasis on the parties doing everything they can to reach their own agreement long before any invitation is made to an independent third party to fix rates and conditions, whereas the award system is built around a process of compulsory fixing.

In New Zealand's case, employers will only have to bargain in good faith and agreements will be struck. Arbitration only kicks in to ensure vulnerable workers are protected. Which makes it all the more shocking that what appears to be a blatantly political and without merit case has been presented to this Committee. When this Committee has such a competing list of extreme cases of standards being breached in many cases with life and death consequences for workers.

FPA's will serve a comparable function to Awards in Australia, and with them, New Zealand's industrial relations system will once again have far more in common with Australia's. Our assessment of FPAs is that they will in fact promote and support collective bargaining and the right for workers to organize.

Minimum standards should never be voluntary. FPAs provide an effective mechanism and are essential in protecting the most vulnerable and lowest paid workers. They should be properly assessed as part of the machinery of fixing minimum wages and conditions and consistent with core Conventions.

Worker member, Samoa (Ms TOMI) – Today I am proud to speak in support of the New Zealand Government's work on Fair Pay Agreements. Fair Pay Agreements will be important instruments to lead standards of decent work and will be of particular benefits to our specific migrant worker in New Zealand.

Every year 60,000 people from the Pacific travel to New Zealand under the Recognized Seasonal Employers (RSE) Scheme to work in agriculture and horticulture industries. People from the Pacific value these opportunities and we also want to make sure that the work our people do in New Zealand is decent, safe and fair.

Our Samoans and all other Pacific migrant workers in New Zealand are vulnerable. In reality, they cannot possibly engage in effective and fair individual bargaining or collective bargaining under the New Zealand Employment Relations Act and because New Zealand does not have a set of minimum industrial standards, our people do not receive fair wages and enjoy decent terms and conditions of employment under the RSE Scheme. That is why it is so important that the New Zealand Government is looking at new ways to raise standards across whole industries.

During the COVID pandemic, when employers were desperate for RSE workers and New Zealand granted limited border exemptions for Pacific seasonal workers, the Government unilaterally imposed conditions on employers that they pay a living wage of $22 an hour, $2 above the minimum wage at the time. Without that interim measure, these workers would have remained on the minimum wage.

This was an example of a Government using its power as a regulator to raise pay for working people across an industry where the Employment Relations Act mechanism for bargaining are inadequate. Fair Pay Agreements would use that same power to raise standards

for decent work across industries, with mechanisms to give workers and employers a real voice in the process.

By doing this, Fair Pay Agreements will benefit our Pacific migrant workers and all workers in New Zealand.

For that reason, I congratulate the New Zealand Government on taking this initiative which is central to achieving decent work for RSE workers.

Government member, Australia (Ms ROWE) – As a cornerstone of Convention No. 98, Australia respects the rights of countries to implement measures, appropriate to national conditions, to encourage and facilitate collective bargaining between employers and workers. We are therefore pleased to note that New Zealand's Fair Pay Agreements Bill, the subject of our discussions today, has been developed as a recommended outcome of a tripartite working group formed to address labour market challenges unique to New Zealand.

Australia fully supports the objectives of the proposed Fair Pay Agreement system, a system that is intended to deliver better living standards for workers and their families and provide an environment that enhances productivity, growth and the sustainability of enterprises.

The Australian Government believes sectoral minimum standards, supplemented by collective bargaining, provides the right balance between a safety net on the one hand, and driving wage growth and productivity on the other. This can only deliver outcomes that are in the best interest of both workers and employers.

We further support the intention of the proposed Fair Pay Agreement system to drive enduring, transformational system-wide change benefiting workers, particularly those in low-paid jobs, or in sectors where there is low or no effective representation or bargaining.

Australia notes the cooperative spirit in which the New Zealand Government has engaged with the Committee. We encourage all parties to continue to engage constructively through tripartite dialogue to work towards achieving the important objects of the Fair Pay Agreement Bill.

Miembro trabajador, Chile (Sr. ACUÑA) – La negociación colectiva tiene varias funciones relevantes en el mundo del trabajo ya que constituye una práctica de diálogo social a nivel de empresa o actividad. Una manera de mejorar las condiciones de trabajo y de vida de los trabajadores y sus familias y, en consecuencia, la paz laboral. Por este proceso de negociación debe ser llevado adelante mediante la buena fe de las partes, de tal modo que no se pueda desnaturalizar en una mera ritualidad o formalidad que las empresas y sus organizaciones cumplan para desentenderse de sus obligaciones con los trabajadores y con el cumplimiento de las normas sobre los derechos fundamentales.

En vista de ello, la negociación de buena fe requiere que, si los empleadores aducen la imposibilidad de alcanzar un acuerdo, deban existir razones objetivas que permitan verificar si actuaron diligentemente o si simplemente pretenden eludir sus obligaciones éticas y jurídicas.

Tiene, por tanto, que existir una causalidad basada en motivos reales y criterios razonables, que fundamente y justifique la imposibilidad de alcanzar un convenio colectivo, o sea, un motivo real que impida el acuerdo. Con esto queda muy claro que no se trata de una obligación de acordar o de una imposición arbitraria de condiciones de negociación colectiva por parte del Estado, sino de una verdadera obligación de tomar todas las medidas posibles para celebrar un convenio colectivo.

Como toda obligación jurídica, de constatarse un incumplimiento grave o sostenido del derecho de la buena fe, la ley laboral deberá dar una respuesta para dotar de efectividad el derecho de negociar de buena fe.

Por esto, apoyamos también la disposición adicional de la Ley de Relaciones Laborales que prevé que la autoridad fije los términos en un convenio colectivo en casos excepcionales y solo cuando se haya producido una violación grave y sostenida de la buena fe durante la negociación. Sin esta última garantía la negociación colectiva podría ser impedida por una de las partes, mismo cuando esta carezca de razones reales para no llegar a un acuerdo, es decir, sin esta garantía en la legislación, si una de las partes decidiera arruinar la posibilidad de un acuerdo lo podrá hacer sin mayores consecuencias.

Por ello, compartimos la observación de la Comisión de Expertos en tanto señala que, en el marco del Convenio, la garantía del carácter voluntario de las negociaciones colectivas es inseparable del principio de la negociación de buena fe, ya que el objetivo general de la norma es la promoción de la negociación colectiva de buena fe con miras a alcanzar un acuerdo sobre las condiciones de empleo.

Por estas razones consideramos que la legislación de Nueva Zelandia cumple cabalmente con el artículo 4 del Convenio.

Worker member, Italy (Mr MARRA) – I am speaking today also on behalf of the Italian, Belgian, Dutch, French, German, Irish, Norwegian, Spanish and United Kingdom workers, as well as on behalf of the Building and Wood Workers' International (BWI).

Regarding the case the Committee is discussing today, I would like to once again stress one of the core principles just mentioned by the previous speakers included in Convention No. 98, that is, the importance of strong and coordinated national collective bargaining systems.

I will quote the Committee of Experts' report, "an uncoordinated system of collective bargaining has been in place in New Zealand since the 1990s, with collective bargaining coverage at around 17 per cent for the last two decades, down from around 70 per cent 30 years ago. Most collective bargaining is confined to the enterprise level and most bargaining per se happens between individual employers and individual employees". Such a system is simply incapable of producing decent work and social dialogue for the vast majority of workers and can only lead to more injustice and poor labour market outcomes.

Speaking from the Italian perspective and tradition of industrial relations where almost 90 per cent of workers are covered and protected by a national industry standard reached through industry wide collective bargaining, I can only reaffirm that a strong, coordinated and well-functioning collective bargaining system is a pre-condition – quoting again the Committee of Experts' report – to reduce "the negative factors of low wages and wage growth, the decoupling of wages from productivity growth", as also said by the previous speakers "and poor labour practices vulnerability".

We therefore strongly endorse the swift adoption and implementation by New Zealand institutions of a new FPA, an employment regulatory landscape that provides an effective industry floor that supports firm-level collective bargaining and as well, promotes a national well-functioning fair labour market.

Membre gouvernemental, Belgique (M. CORTEBEECK) – La Belgique tient à saisir l'opportunité de l'examen du cas de la Nouvelle-Zélande pour réaffirmer son soutien à la

commission d'experts. Le travail qu'elle réalise constitue la pierre angulaire du système de contrôle de l'OIT. Son indépendance et impartialité sont le fondement de son autorité.

S'agissant du contenu du cas, la Belgique prend note avec intérêt des explications avancées par le gouvernement.

Elle souhaite insister sur l'importance et le rôle de la négociation collective comme un élément essentiel pour prévenir les conflits et assurer la paix sociale.

La liberté de négociation n'est pas incompatible avec les mesures et moyens qui encouragent à y recourir et qui en assurent la promotion.

L'article 4 de la convention insiste à cet égard sur la nécessité de tenir compte des conditions nationales dans le choix des moyens les plus appropriés.

De même, comme l'indique la commission d'experts, la garantie du caractère volontaire des négociations collectives est inséparable du principe de la négociation de bonne foi si l'on veut que le mécanisme dont la promotion est prévue par l'article 4 de la convention ait un sens.

Il convient toutefois de ne pas contraindre à conclure une convention collective.

Pour conclure, nous souhaitons insister et rappeler les vertus de la négociation collective pour l'amélioration des conditions des travailleurs mais également pour le développement des entreprises et de l'économie.

Observer, International Transport Workers' Federation (ITF) (Mr SUBASINGHE) – The ITF as a representative of transport workers around the world is painfully aware of the complete lack of industry-wide standards in New Zealand and its impact on workers across all transport modes. The "race to the bottom" in the country's bus industry, which has caused chaos for workers and communities alike, is instructive.

The transition from industry bargaining to competitive tendering has had a catastrophic impact on wages. The lowest wage payable in the 1990 bus industry award was 66 per cent higher than the minimum wage. Today's lowest rates are scarcely 10–15 per cent above the minimum wage.

All this, despite labour productivity in the transport and logistics sector having grown more than three times the rate of wages. If sector wages had kept pace with labour productivity, the average transport worker in New Zealand would have been $36,000 better off in 2021.

To cite an example of this "race to the bottom" in the bus industry, recently, in New Zealand's capital city of Wellington, 70 per cent of the bus services for the region were put up for tender, in accordance with national regulations.

The company that had been providing the service, had a collective agreement in place and so had no chance of winning the tender against new entrants with no CBAs to honour. As expected, a new company won the tender and the CBA allowances for overtime, weekend, night and split shifts were removed completely.

The original provider still had 30 per cent of the bus routes and realized they would soon lose them when these remaining routes came up for tender. So, they sold the company to another entity which then locked out the drivers to remove the CBA allowances.

The Regional Council and the community were horrified at the treatment of these frontline workers and "pandemic heroes". But it should not come as any surprise when there are no industry standards in place. While there are some protections for vulnerable workers

during a transfer of undertakings, these do not apply to bus drivers, because they are deemed not vulnerable enough. Now, faced with low wages and poor conditions, the industry is unable to attract staff.

To conclude, New Zealand desperately needs to introduce a system for fixing minimum standards and we believe that FPAs will provide that.

Observer, Public Services International (PSI) (Mr RUBIANO) – Just a few days ago, one of our affiliates – the New Zealand Public Service Association – participated in a formal ceremony with Government and Employers to celebrate an equal pay settlement for several thousand clerical and administration workers employed in the New Zealand health sector.

This was the first to be completed under the recently amended Equal Pay Act. What has this got to do with New Zealand's prescription for Fair Pay Agreements (FPA) you might ask? Well – FPA's and New Zealand's Equal Pay Act are in many key respects identical.

For instance, they both provide for unions and employers to arrange bargaining of a minimum standard on behalf of a whole industry or occupation, and to ratify it, in the shadow of a fixing process if negotiations become protracted and unable to reach agreement.

There are other similarities as well that I will invite the Committee of Experts to compare but for time reasons I will skip from my speech today.

There are a couple of differences as well. One is that workers can opt out of the Equal Pay process, but of course not a single worker has, despite the fact that tens of thousands of workers have settled pay equity minimum standards in the past couple of years. This is because the equity minimum standards in the past couple of years do not impinge on workers' rights in theory or practice – they underpin and strengthen them.

The second difference is that the process set out above and contained in the Pay Equity Act was unanimously supported by the social partners including Business New Zealand (BusinessNZ).

Before these pay equity industry standards were set, women workers in New Zealand across an industry suffered from downward competitive pressure on their pay and conditions, and companies were able to underpay and undervalue these vulnerable and essential workers.

Unfortunately, the same thing is happening to many other low-paid vulnerable workers in New Zealand, because there are not effective industry standards in place, like in many other developed economies. FPA's, like New Zealand's Equal Pay Act, will be critical features of their system, features that are very much in line with the Convention and must proceed unhindered.

Government member, New Zealand (Mr HOBBY) – I would like to begin by noting the range of contributions and comments made and to assure the Committee we have listened very carefully to all of them, and we will certainly take all of them into account irrespective of the source.

As I mentioned before, the legislation has not yet been passed and is still a matter in progress. I would like to address a few specific points that have been raised.

First, I think by the Employer spokesperson relating to the application of section 33 and 50J of the Employment Relations Act. The first point I would like to make is that these provisions are not part of the Fair Pay Agreements Bill. These are completely separate, one relates to the ordinary process of collective bargaining in New Zealand and the other, of course, is a specialized process which involves collective bargaining in the setting of sectoral minimum terms and conditions.

The Employer spokesperson made some play of the fact that compulsory arbitration is generally incompatible with the principles of voluntary collective bargaining and that is true. However, the focus here is on the word, “generally”, and as we all know there are exceptions allowed to those principles and one of them in particular is around the use of deadlocked bargaining where there is no other option.

Now to recast it in terms of the provisions of the Employment Relations Act I would like to reiterate that section 33, relating to the duty of good faith recognizes, in complete compatibility with the views of the Committee of Experts that really the object of good faith bargaining cannot be separated from voluntary bargaining. If the parties are bargaining in good faith the assumption is that they intend an outcome to result unless this is genuinely not possible, and that prospect is absolutely recognized in our law. The provision for the compulsory fixing of the terms and conditions of a collective in those circumstances needs to be seen in terms respectively, as a penalty for a serious and sustained breach of the duty of good faith. So, we cannot see how this impinges on the principle of free and voluntary collective bargaining, unless that principle is completely unconstrained which of course, it is not.

In terms of the use of compulsory arbitration for Fair Pay Agreements; again, the principles apply where it is simply impossible to reach any kind of outcome the use of arbitration is not seen as incompatible.

The Employer spokesperson also noted the other category of the public service and of course it is entirely possible that Fair Pay Agreements may apply in the public service where the use of arbitration would therefore not be incompatible.

I would like to go back and I think the point was also made by the speaker from the Government of Belgium. The Committee of Experts considers under the Convention ensuring the voluntary nature of collective negotiations is inseparable from the principle of negotiation in good faith if the machinery to be promoted under Article 4 of the Convention is to have any meaning. The Committee recalls in this respect that the overall aim is the promotion of good faith collective bargaining with a view to reaching agreement. The Committee observes sections 31, 33 and 50J have not given any rise to any comments in the decade in which they have been enforced. The Committee observes that the Act provides for significant consideration before section 50J can be applied including rights of appeal to the Employment Court, etc. The Committee has asked for more information about the use of this provision noting again that it has only been used once and we are more than happy to provide information should such cases ever arise in future, and we would hope and expect that they would be extraordinarily rare.

I turn to comments made by the Employer spokesperson representative from New Zealand and he has made a number of points. I guess it is true there was a tripartite process and the employers did not agree with ultimately the conclusions as is their right in any tripartite process. A tripartite process does not necessarily always result in tripartite agreement and we have never said otherwise. We have said that this arose from a tripartite process, but tripartite agreement is another matter. However, the majority of the Committee did recommend the principles and the mechanisms that have been taken up by Government in the legislation.

Comments have also been made about the Cabinet process, and the point I would like to make here is this, the Government did not go into this process saying we are going to deliberately thumb our nose at the Convention. In fact if you read through the relevant papers, and they are publicly available, they mention a careful analysis where under each heading, whether or not the aspect of the Fair Pay Agreements will engage with the rights and obligations related to the Convention are carefully noted, and again in areas such as

compulsory arbitration, although it is noted that these aspects of the legislation could challenge the principle of voluntary collective bargaining, they are seen as essential to ensure that enforceable minimum terms are produced at the end of the process. But again, that needs to be seen in the context of what is allowed by the Convention and the use of compulsory arbitration as I have just laid out.

I also take issue, I think, with the comments that the Government is in control of the entire bargaining process. It is not at all uncommon, in fact it would be impossible for any legislatively based bargaining process to not be administered by an agency of the State. That does not mean the Government is directing the bargaining process or the bargaining outcomes, merely that the agencies of the State are administering the processes as set out in law for those outcomes to be negotiated, bargained, and achieved, one way or the other.

A couple of points made also that employers will not be able to control the scope or coverage of an FPA. This is simply incorrect. While a party that initiates FPA bargaining must specify the proposed scope, this can then be negotiated and altered during the bargaining process itself.

It has also been claimed that if the public interest route, or the public interest test is used, that the public will not be consulted, and I want to clarify that the legislation explicitly allows the regulator to seek public submissions when deciding whether the initiation tests have been met.

I do not want to dwell on issues raised about whether or not the Government has delayed the consideration by the Committee of this case or indeed any consideration of the FPA legislation. I will merely note that I disagree entirely. There has been correspondence, certainly between the organization of employers and the Office, which we were made privy to at a point. We then sought, engagement with the employers' organization after that point, which proved impossible, initially, to achieve due to their inability to meet with us, but I do not want to dwell on that at all.

I think, generally, I will conclude my comments at that point. Again, I reiterate that the legislation itself has not been fixed and I go back again to the overall objectives of the Fair Pay Agreement system as has been echoed I think in a number of the comments made to this point. The point here is that FPAs will serve a specific purpose of setting sectoral minimum terms and conditions where needed to address labour market issues, that involves collective bargaining but also the setting of minimum terms and conditions on a sectoral basis. This is not uncommon.

The FPA system supplements, but will not replace, the existing collective bargaining framework and all of the rights and privileges and obligations under that continue to exist in parallel, and of course when an FPA agreement results in minimum terms and conditions, those then may be bargained on top of, and in that process all of these other rights, basically the same as exist currently.

So, the operation of the FPA system will not interfere with our enterprise bargaining system which will continue to operate in parallel.

I conclude, again, by noting that we remain open and receptive to the Committee's comments and will take all comments made into careful consideration in the finalization of the legislation, and I thank the Committee for its attention.

Worker members – We would like to thank the Government of New Zealand for the detailed information provided to our Committee and we also thank all the speakers for their contributions.

To fully realize the potential of collective bargaining, it is imperative that all workers enjoy this right, and we are therefore heartened by the Government's efforts to ensure Screen Industry workers can engage in free and voluntary collective bargaining. Similarly, we are pleased to see the Government take concreate action to codify the duty to bargain in good faith, a long-standing principle protected under the Convention.

Indeed, for collective bargaining and its intended labour market outcomes to be successful, both employers and trade unions must bargain in good faith and make every effort to come to an agreement. The reforms in New Zealand in this regard are fully in line with many collective bargaining systems around the world, which recognize duty to bargain in good faith with the intent to reach an agreement. Also, the ability of the Employment Relations Authority to fix the terms of a collective agreement or an FPA provide a critical backstop without which collective bargaining could be thwarted by parties who can otherwise sustain serious breaches of good faith without sufficient consequence.

In this regard, we note that the ILO supervisory bodies have held that while Article 4 of the Convention in no way places a duty on the Government to enforce collective bargaining, it is not contrary to this provision to oblige the social partners within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery to enter into negotiations on terms and conditions of employment.

An FPA system betrust by comprehensive bargaining support services is a great example of an upper-level barging initiative aimed at offering the social partners every chance to reach settlements. As a number of speakers have highlighted this morning, higher bargaining coverage sustained by sectoral bargaining and extension mechanisms lead to lower wage inequality and hence low-paid employments.

As the OECD publication "negotiating our way up" highlighted, the best outcomes in terms of employment, productivity and wages seem to be reached when sectoral agreements set broad conditions but leave detail provisions to firm-level negotiations. This is precisely the path that New Zealand is taking with FPAs which would set minimum sectoral or occupational standards which can be built on at the enterprise level. This system would also create a level playing field where good employers are not disadvantaged by paying reasonable industry-standard wages.

We trust that the Government will engage meaningfully with the social partners on any outstanding concerns that they may have in advance of the FPA Bill being adopted, and we also call on the Government to provide the information requested by the Committee of Experts so that it may make further informed observations on the implementation in law and practice of the Convention in New Zealand.

In conclusion, we would like to reiterate the critical importance of the fundamental right to collective bargaining in lifting standards, reducing inequality and creating a level playing field. Together with the right to freedom of association it enables the exercise of all other rights at work and it is well recognized that the promotion of collective bargaining it is not just a stand-alone principle of international labour law. It has been integral to the mission of the ILO itself, since its establishment. Convention No. 98 is intended to serve the purpose, among other things, of promoting collective bargaining and therefore it is evident that Article 4 is at the very heart of the Convention. For the avoidance of doubt, we would like to re-emphasize our full

respects to the Committee of Experts and its pronouncements with regard to Article 4 of the Convention.

Employer members – We thank the Government representative for his submissions and we also thank all of those that took the floor to speak on this case.

We think it is of particular note that taking into account the clear divergence of views on the application of Article 4 of the Convention, and more generally the obligations that flow from this Convention. The divergence of views expressed today demonstrate the need for renewed and reinvigorated social dialogue on this issue at national level.

As we pointed out in our opening, Article 4 is based on the premise of voluntary negotiation and it is our view that both sections 31 and 33 specifically include aspects that compel negotiation. Also in our view, it remains clear despite the interventions today, that section 50J permits compulsory arbitration to fix the terms of a collective agreement where bargaining parties cannot reach an agreement. And while I heard the Government representative talk about exceptions to these general principles the Employers do note that the Committee of Experts has long-standing jurisprudence on the question of compulsory arbitration and the Committee of Experts itself has recalled that compulsory arbitration in the case where parties have not reached agreement is generally contrary to the principles of collective bargaining enshrined in the Convention. And in fact the Committee of Experts' jurisprudence and observations talk about compulsory arbitration being acceptable in certain circumstances; that would be essential services, public service and after protracted and fruitless negotiations or in the case of acute crises.

So, there is a landscape in which the Committee of Experts have issued observations on this issue of compulsory arbitration and it is not quite as simple as the Government representative suggested.

We do note that the Fair Pay Agreement is in its status of a Bill format, and I believe the Government representative talked about the fact that it has yet to be fixed. And, as a result, the Employer members – because this question involved allegations of a breach of a fundamental Convention, and involves clearly very different views between the various groups, we would encourage the Government to reengage the social partners with respect to the Fair Pay Agreements Bill to see if there is a way forward that ensures compliance with Article 4 of the Convention.

We would encourage the Government at this stage, since it has the ability to complete the provisions of the Fair Pay Agreements Bill to work to ensure that any application of the Fair Pay Agreements Bill is purely voluntary in compliance with Article 4 of the Convention.

We would also ask that the Government submit the Fair Pay Agreements Bill to the Committee of Experts for review and comment so that the Committee of Experts can issue observations to allow a further understanding of all of the details in this regard.

Also, the Employer members request the Government to remove without delay the duty to conclude collective agreements from sections 31 and 33 of the Employment Relations Act. As well, the Employers request the Government to remove without delay provisions that permit the courts to fix the terms of a collective agreement as set out in section 50J.

Therefore, we would ask that the Government engage with the ILO on these issues so that it can be sure that it is in full compliance with Article 4 of the Convention and that it submit a report to the Committee of Experts by 1 September 2022 with the relevant information on the application of the Convention both in law and practice.

El Presidente – Las conclusiones serán adoptadas por la Comisión en la mañana del viernes de 10 de junio.

The sitting closed at 12.15 p.m.

La séance est levée à 12 h 15.

Se levantó la sesión a las 12.15 horas.