

# Fair Pay Agreements

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# What I want to talk about today

- How we got here?
- What is on the table?
- Where do we go from here?

# How did we get here?

It has been a long process in getting to this point.

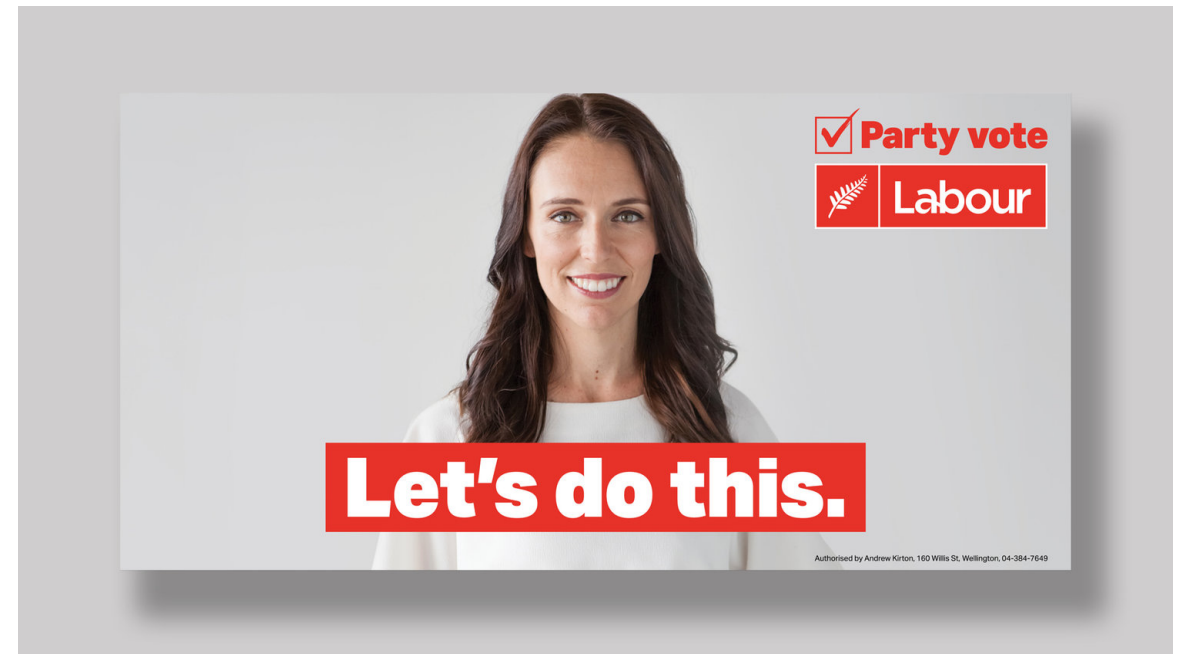
Two of the main historical factors that have driven the work to date:

- 1) The work that Helen Kelly and others commenced in “Extension Bargaining”
- 2) The work led by Kristine Bartlett in winning the pay equity case against Terranova for care workers



# 2017 Labour Party Manifesto

“In conjunction with all relevant stakeholders, develop and introduce a legislative system of industry and sector collective bargaining that allows unions and employers, with the assistance of the Employment Relations Authority, to create **Fair Pay Agreements** that set minimum conditions, such as wages, allowances, weekend and night rates, hours of work, and leave arrangements for workers across an industry based on the employment standards that apply in that industry”



# As Part of that commitment..

## FAIR PAY AGREEMENTS

Supporting workers and firms  
to drive productivity growth  
and share the benefits



- In 2018 the Fair Pay Agreements Working Group presented its conclusions.
- It used the party manifesto statement as its terms of reference
- It was led by Rt Hon Jim Bolger – former National Prime Minister, and was tripartite in its make-up
- Made recommendations to Ministers, but was subject to much criticism from government officials when produced

# 2020 – New Political Leadership

**After the 2020 election the new Minister for Workplace Relations was Hon. Michael Wood.**

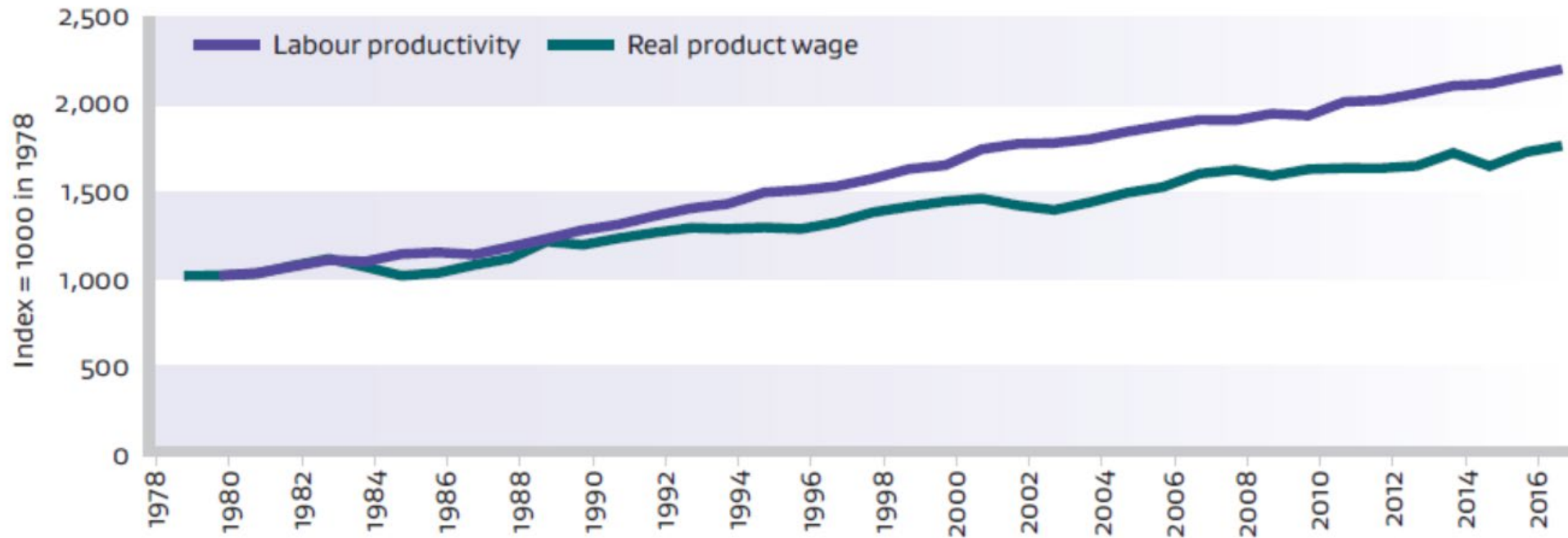
**He has sought to largely deliver the recommendations of the working group**

**He has also sought the delivery of a fair pay agreement in this term of office (i.e. before the end of 2023)**



# Economic Case in New Zealand

Wages have been growing more slowly than productivity



**While the economy has grown over the last 30 years, wages have lagged behind increases in labour productivity. Meanwhile the highest earners have seen their wages increase at twice the rate of middle-income earners.**

# What is on the table?

- Cabinet's objective is for FPA's "to improve labour market outcomes by enabling employers and employees to collectively bargain minimum employment terms that will be binding on an industry or occupation"
- However, the proposals don't quite follow the proposals that the Fair Pay Agreement Working Group set out

## BUDGET SENSITIVE

### Budget Sensitive

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Development Committee

### Fair Pay Agreements: Approval to draft

#### Proposal

- 1 This paper seeks agreement to the key features of the Fair Pay Agreement (FPA) system, which would enable employees and employers in an industry or occupation to bargain new minimum standards. This paper also seeks approval to begin drafting legislation to give effect to the FPA system.

#### Relation to government priorities

- 2 The proposals in this paper support the Government's priority to provide an inclusive economy where economic growth is shared by all. Implementing FPAs was a manifesto commitment and included in the Speech from the Throne as a policy that will contribute to accelerating the recovery in response to the Covid-19 pandemic.
- 3 Creating a system for FPA bargaining will enable employers and workers in an occupation or industry to bargain an FPA that will create new minimum standards that

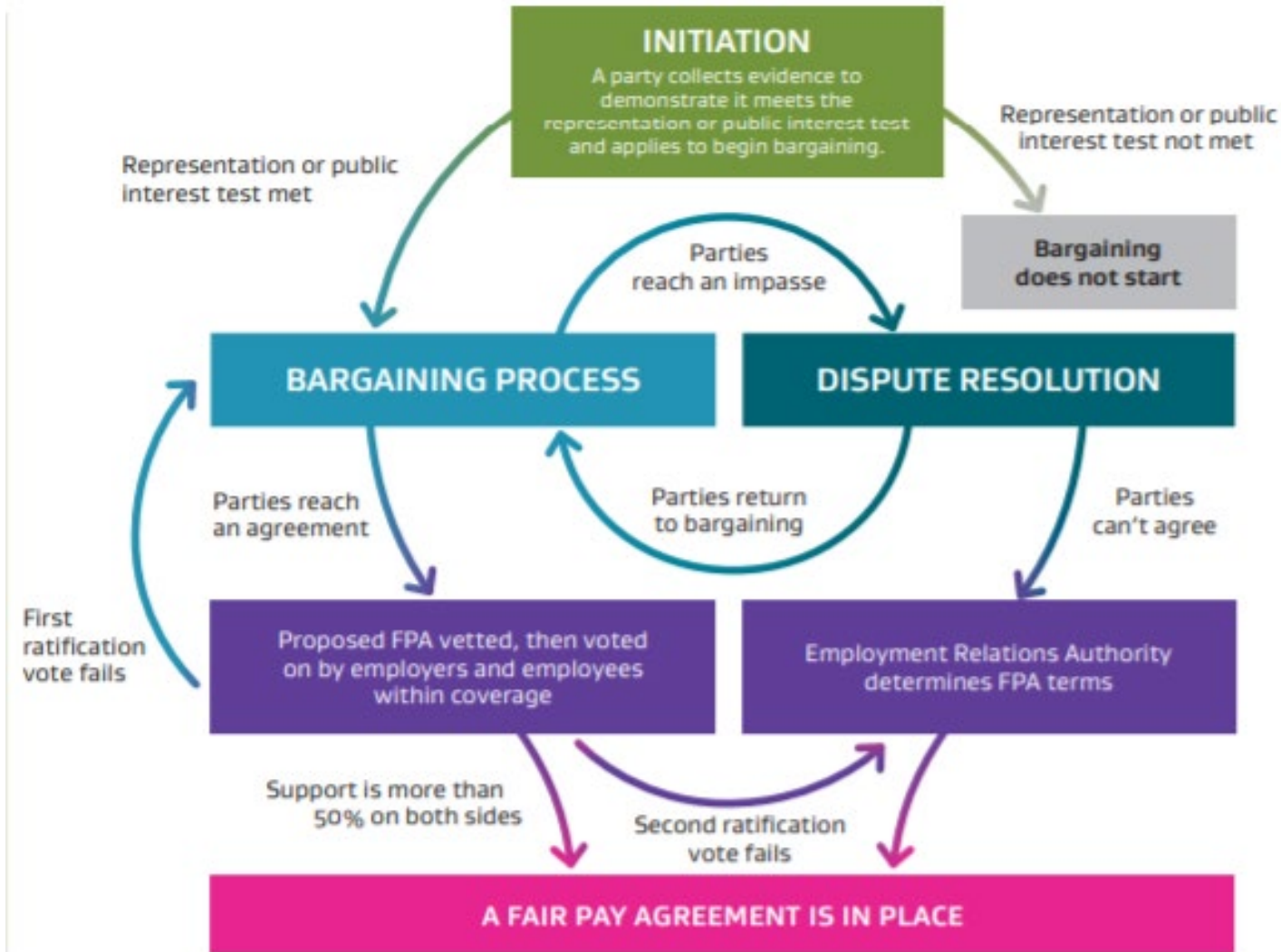
# What is an FPA?

- An FPA is an agreement across an industry or occupation
- An FPA is a 'baseline'. It creates a floor for pay and conditions
- It does not inhibit collective bargaining
- It is legally binding on all employers 'within coverage'
- It creates two types of term – mandatory to agree & mandatory to discuss
- Can be determined by the Employment Relations Authority if frustrated

# What is it not?

- An FPA is not a maximum – it doesn't mean that you are all going to be paid the same
- It doesn't prevent employees negotiating with employers over issues
- It does not currently include contractors in the scheme. Work is underway to rectify this
- Its not going to solve all of New Zealand's workplace relations problems overnight

# MBIE's Easy to Read Summary



# Initiation

## **Mandate**

Unions only can initiate the Fair Pay Agreement (FPA) process, by meeting a representation threshold of support from 10% or 1000 workers in coverage, or a public interest test.

## **Coverage**

The initiating union or unions must decide which work they want covered. If there is an overlap in coverage between two FPAs, the second one only applies if the workers would be better off overall. Penalties will be applied to employers who try to avoid FPA coverage by misclassifying employees as contractors.

## **Notification**

Employers, unions, business representatives and government will each have a role in notification, to reach as many affected parties as possible.

# Process

## **Bargaining Parties**

Unions will represent employees. Employers will choose representatives who meet specified requirements. The bargaining sides must use best endeavours to represent all those in coverage, including non-members, and to ensure Māori interests and views are effectively represented.

## **Scope of Agreements**

All FPAs must include certain topics like base wage rates, ordinary hours, overtime and penalty rates. Some other topics must be discussed but don't have to be agreed, like redundancy, leave, health and safety, and flexible working. Other employment terms can be included if the bargaining sides agree.

## **Flexibility**

An FPA can allow for exemptions for businesses if they are in significant financial hardship. An FPA can set regional differences, and other differential terms if they comply with the Human Rights Act and minimum employment entitlements. An FPA can set a preferential payment for union members, up to a maximum value of their union membership fees.

# Support

## Active Support

Bargaining sides will be supported by training and a government provided bargaining support person. The government will also contribute up to \$50,000 per bargaining side. Funding for this support is based on 4 FPAs per year. If more than 4 FPAs are initiated, support may be rationed and prioritised. The New Zealand Council of Trade Unions and Business New Zealand will each be funded to support their coordination roles in the FPA system.

## Communication

Employees will receive direct updates from unions, unless they opt out of communications. Employers must allow employees to attend 2, 2-hour paid meetings during FPA bargaining. Unions can visit workplaces on FPA business without needing the employer's consent.

## Dispute Resolution

If bargaining parties encounter difficulties, mediation will help to resolve them. The Employment Relations Authority can also make recommendations. If bargaining parties reach a stalemate, the Employment Relations Authority will set the FPA's terms by determination.

# Agreement

## **Vetting**

The Employment Relations Authority will vet an agreed FPA to ensure the terms are lawful, before it goes to a vote.

## **Ratification**

A proposed FPA will need support from a simple majority of both employee and employer voters to be ratified. Employers have 1 vote per employee in coverage, with slightly higher vote weighting for employers with fewer than 20 employees in coverage. If a first ratification vote fails, parties go back to bargaining. If a second vote fails, the FPA goes to the Employment Relations Authority for determination.

## **Enactment and Enforcement**

Once finalised, MBIE will make secondary legislation to bring the FPA into force, so it will apply to everyone within coverage. People within coverage can enforce their rights through the standard employment dispute resolution system. In addition, the Labour Inspectorate can enforce certain terms of the FPA

# Key Differences with Australia

- Modern awards are an administrative process – not bargained outcomes. FPA's are bargained outcomes
- Fair Work Commission has complete control over the process, and parties submit.
- Process for amendment of Modern Awards is mostly state driven, whereas any FPA amendment post initial agreement will likely be a bargained outcome
- Modern Awards don't die – whereas FPAs have an expiry date
- Enforcement is via Fair Work Ombudsman, FPA's enforcement process is a bit unclear

# Where do we go from here?

- **Assuming that the Bill enters the house later this year, then:**
  - 6 Month Select Committee Process (education and workforce committee)
  - Third reading and royal assent after this process
  - Legislation would be complete in 2022 – with FPAs opening for business on passing
  - Assuming that the first FPA agreement took less than a year to deliver, this would see an agreement in place by mid 2023
  - We expect that many unions may seek an FPA, but that a sector with a highly identified need (such as Bus Drivers) would be first.

# Still plenty to do

- **For FPAs to become the kind of legislation that we can all be proud of, then we need:**
  - Contractors must be included
  - “Mandatory to discuss” should become “Mandatory to agree”
  - Enforcement by government is essential – through the Labour Inspectorate
  - Access for the purpose of organising support for FPA initiation must be provided

# Just as a quick final note

- **Whisper it – but there is a quiet revolution going on in Industrial Relations in New Zealand which alongside changes in the economy present a huge opportunity for the Union movement**
  - Fair Pay Agreements
  - Contractors Reform
  - Extension of Sick Pay
  - State Backed Employment and Health Insurance
- **The opportunities for Unions to organise on the back of this transformation is enormous, especially in sectors that we have not seen growth in for years.**
- **With a strong economy and low unemployment forecast into the future, we have never been better placed to grow and deliver better conditions for workers**



**Any Questions?**