

The proposed Fair Pay Agreement system



The Government is implementing a Fair Pay Agreement system, a new mechanism for bargaining to set binding minimum terms and conditions across an occupation or industry.

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

Less than one-in-five New Zealanders are represented in collective bargaining – that’s down from around 70 per cent three decades ago. There is increasing evidence of a ‘race to the bottom’ in some sectors, where some businesses compete for contracts by reducing wages or employment conditions.

The Government’s Fair Pay Agreement system aims to address these challenges by bringing together employers and unions within a sector to bargain for minimum standards for all employees in that industry or occupation. The proposed system will include support for bargaining parties to help them navigate the negotiation process and reach an outcome, as well as processes to ensure compliance.

In the short term, the Government wants Fair Pay Agreements to:

- › Increase bargaining power for employees
- › Ensure the minimum pay and employment terms are reflective of the needs of sectors covered by a Fair Pay Agreement
- › Create an environment where businesses compete based on better products and services, rather than some trying to compete by driving down wages and conditions
- › Incentivise businesses to invest in training and innovation
- › Create sector-wide coordination

And in the long term the Government intends for Fair Pay Agreements to:

- › Boost living standards for employees and their families
- › Share the benefits of increased productivity more widely
- › Improve economic productivity
- › Establish better dialogue between employers and workers

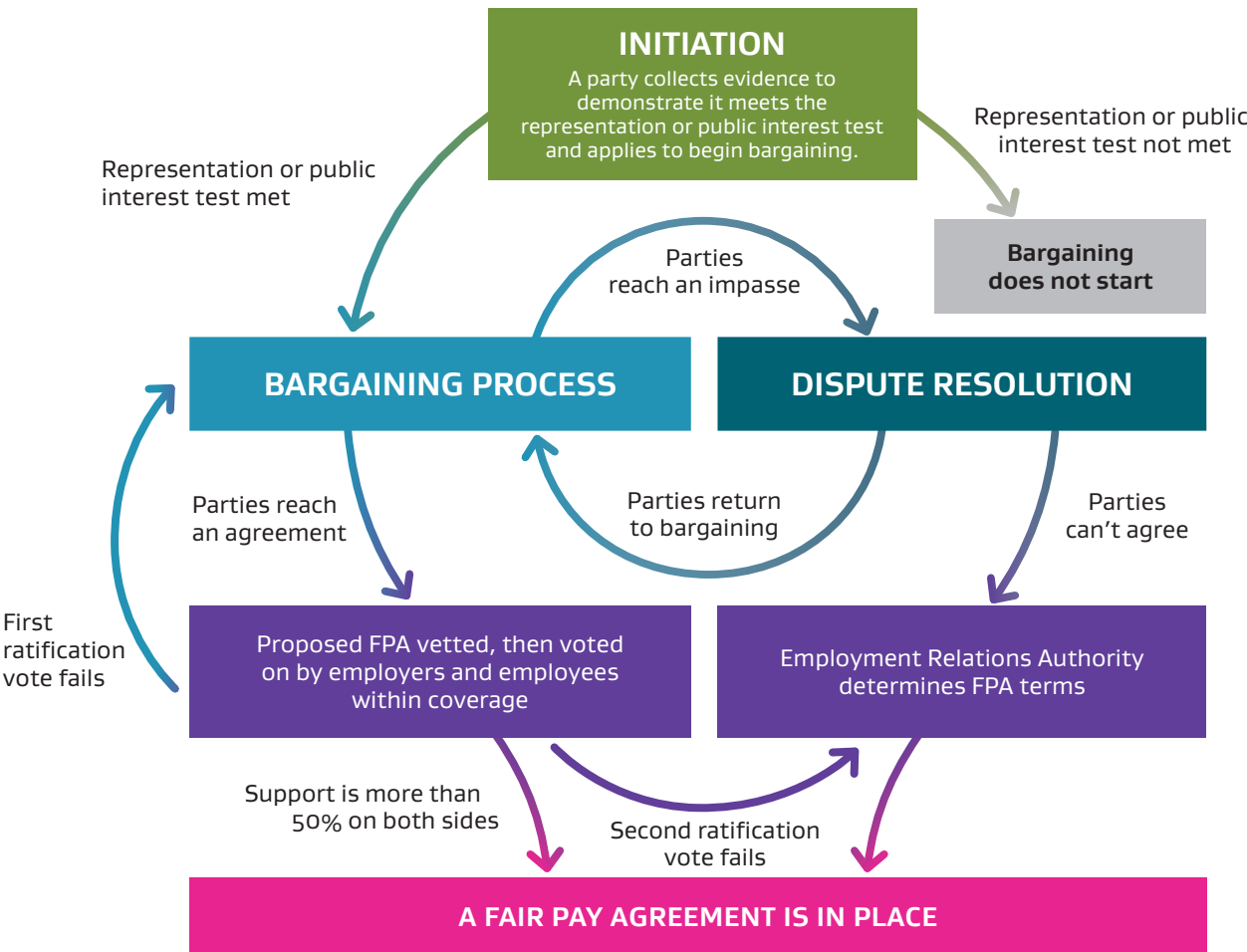
The Government introduced the Fair Pay Agreement legislation in March 2022.

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1: INITIATION

A number of steps must be taken before bargaining can begin.

- › **MANDATE:**
Unions initiate the FPA process, by meeting a representation threshold of support from 10% or 1000 workers in coverage, or a public interest test. If the coverage substantially expands during bargaining, the public interest or 10% representation test will need to be retested.
- › **COVERAGE:**
The initiating union/s must decide which work they want covered. Parties can later agree to change the coverage. FPAs can be an occupational FPA or an industry FPA. If there is an overlap in coverage between two FPAs, the second one only applies if the workers would be better off overall. Contractors are not currently included, but the government plans to begin work soon to incorporate contractors into the Fair Pay Agreements Act later. Penalties will be applied to employers who try to avoid FPA coverage by misclassifying employees as contractors.
- › **NOTIFICATION:**
It's important that people who will be covered by an FPA know that bargaining has been initiated. Employers, unions, business representatives and government will each have a role in notification, to reach as many affected parties as possible.



3: SUPPORT

FPAs bargaining will receive more active support than enterprise-level bargaining.

- › **ACTIVE SUPPORT:**
Bargaining sides will be actively supported by training and a government-provided bargaining support person. The government will also contribute \$50,000 per bargaining side, with additional funds if the side has low rates of membership of a union or industry group. Funding for this support is based on four FPAs per year. If more than four FPAs are initiated, the government will need to ration and prioritise its support. Separately, the New Zealand Council of Trade Unions and BusinessNZ have each been offered \$250,000 per year 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 two, two-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.

2: PROCESS

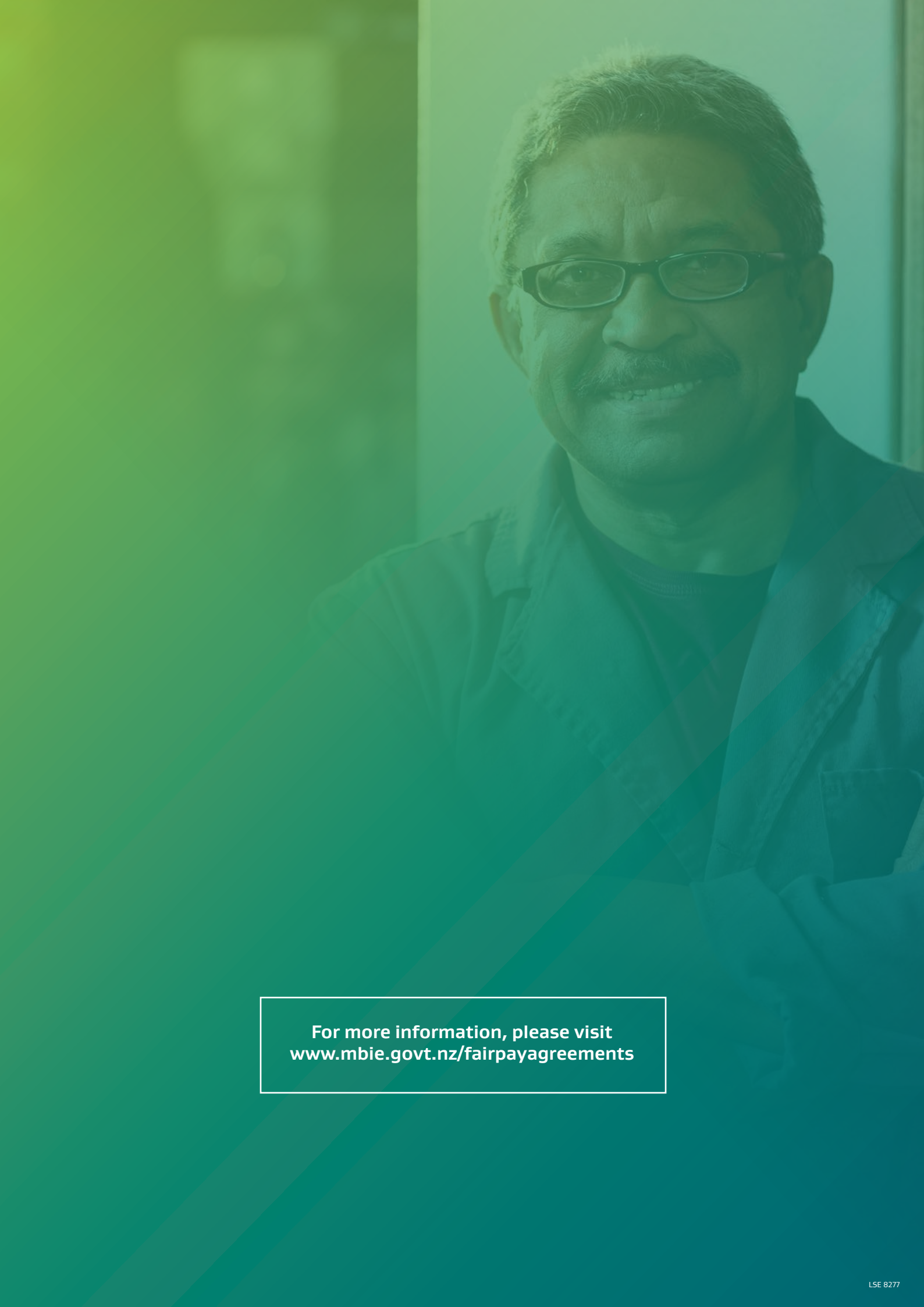
The rules around bargaining will be crucial to ensure FPA bargaining is effective and balanced.

- › **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.
If one bargaining side is, or becomes unrepresented, a default bargaining party may step into bargaining. The government proposes the default bargaining party role will be voluntary and could be fulfilled by the New Zealand Council of Trade Unions (NZCTU) or BusinessNZ. If there is no eligible representative on one side and the default is not willing to step in, then the Employment Relations Authority will set the terms of the FPA as a backstop.
- › **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, and health and safety. Other employment terms can be included if the bargaining sides agree.
- › **EXEMPTIONS:**
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.

4: FINALISING AN FPA

Important steps are needed to ensure the resulting agreements are supported and have the force of law.

- › **VETTING:**
The Employment Relations Authority will vet an agreed FPA to ensure the terms are lawful, before it goes to a vote.
- › **RATIFICATION:**
If bargaining parties reach an agreement, their 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 ER 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.



For more information, please visit
www.mbie.govt.nz/fairpayagreements