



# Fair Pay Agreements: Expectations vs. Realities



MAY 2022

The Fair Pay Agreements Bill (Bill) was introduced to Parliament on 29 March 2022, marking a significant milestone on the Government's long-promised plan to introduce the Fair Pay Agreement (FPA) system. The Government hopes that the introduction of FPAs will improve conditions and outcomes for employees, increase productivity, and drive a more skilled workforce by lifting minimum standards for a sector or occupation as a whole and preventing the 'race to the bottom' that has been observed in many industries.

It is becoming increasingly clear that the Government intends to deliver on its promise this term, and will likely seek to pass the Bill and bring the new regime into effect ahead of the next election in late 2023. In many ways, the conversation has shifted from whether FPAs are the right lever to bring about the desired change, to how this lever can now be implemented in practice.

The Bill is currently at the select committee stage, and was open for public comment until 19 May 2022. Given the significance of the changes being proposed, the Bill is expected to attract a large number of submissions. The Select Committee will then report back to Parliament with its recommendations and the Bill will be subject to parliamentary debate.

If passed, the FPA system will undoubtedly represent the most significant overhaul of New Zealand's employment and industrial relations framework in over three decades. The question is whether the proposed changes (and the significant complexity that they will bring) will actually have a meaningful impact on the problems that the FPA system is seeking to solve. While there is no question that the FPA system has good intentions, many practical aspects of the proposed system have faced criticism.

It is imperative that employers understand the proposed FPA system and start thinking about what it could mean for their organisation if FPAs are introduced, particularly in the context of what is already a challenging employment landscape for New Zealand organisations generally.



# What are Fair Pay Agreements and what is the Government seeking to achieve?

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**At a high-level, FPAs are sector-level collective agreements which set minimum employment entitlements across industries *and* occupations (such as minimum pay rates, hours of work, leave and redundancy entitlements). Like the Australian Modern Awards, FPAs would sit alongside existing enterprise-level collective agreements, individual employment agreements, statutory minimum entitlements, and pay equity bargaining. FPAs would set a new floor for terms and conditions of employment, and employers and employees could then negotiate or bargain collectively for terms that are the same or better than those in the relevant FPA.**

At this stage, independent contractors would not be covered by the FPA system. However, this may change given the Government's stated agenda to bring 'dependent' contractors (i.e. contractors who are highly dependent on a single principal) into the existing employment relations framework.

Last year, we looked at the details of the [proposed system](#) and raised a number of questions and challenges associated with what was being proposed at the time. While some of the issues appear to have now been ironed out, many of the same concerns remain. The Bill presents numerous outstanding challenges both in terms of how FPAs will work in practice, and whether they will in fact address the issues they are seeking to resolve.

## Will Fair Pay Agreements really address the 'race to the bottom'?

One of the driving forces behind the Government's push for FPAs is the 'race to the bottom' which has been observed in some sectors and occupations. The concern is that organisations are competing for contracts and sales by driving down wages and rolling back employment conditions. It is thought that, by setting a new floor for wages, the FPA system would refocus employers to compete based on the quality of their products, services and innovation, rather than by cutting costs.

While we know that some industries are currently incentivised to offer low wages for this reason, we question whether this 'race to the bottom' is a problem in all New Zealand industries and occupations, and whether the FPA system is the right tool to improve the outcomes for those workers that are genuinely vulnerable.

Looking at wage trends overall, there is no indication that workers have suffered falling wages. In fact, while the cost of living has increased far more than the increase in wages over the last year, average wage rates have actually risen faster than inflation across all income deciles since 1998 until last year. Industries suffering from particularly low wages or working conditions could perhaps be better managed by targeted action, rather than introducing a system that applies to all.

In the current economy, it is also arguable that the 'race to the bottom' reasoning doesn't make sense. New Zealand is currently facing massive labour shortages across all industries. This is for a number of reasons, including immigration restrictions, the exodus of Kiwis moving overseas, and the ongoing effects of the pandemic. For example, this is evidenced in New Zealand's [primary industries](#) sector which is experiencing significant labour shortages due to the limited access to migrant workers brought about by the pandemic.

The 'race to the bottom' argument also assumes that workers simply accept the wages presented to them. However, in a tight labour market (as we are experiencing now), an employer with a strategy of undercutting the market by offering low wages is likely to find themselves without staff. In the current environment, employers are far more likely to be in a position where they need to increase wages and benefits in order to attract and retain talent. While this may not be the case in the longer term, or in every industry, it does beg the question of whether the FPA system is appropriate for all sectors, or whether it should be limited to specific industries that are low-paid and vulnerable to poor employment conditions and outcomes.

In light of the above, there is a risk that such a blunt tool to increase wages may actually reduce the overall welfare of workers in the economy. If labour costs increase, employers need to figure out how to pay their employees more. As with all minimum wage increases, these costs eventually get passed on to consumers through increased prices, or employers need to look at ways of reducing costs. At a time when small businesses are already struggling with the impacts of the pandemic, these additional costs could force many employers to consider downsizing and, as a consequence, redundancies.

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## Will Fair Pay Agreements really drive a more skilled workforce?

There is no doubt that a highly skilled and productive workforce is beneficial to everyone. However, it remains unclear how FPAs will contribute directly to driving this outcome. This is particularly so in the immediate term where FPAs appear to be primarily positioned around addressing hygiene factors, such as lifting the terms and conditions of vulnerable worker industries and occupations.

The Government has expressly talked to FPAs being a mechanism to encourage employers to invest in training and development. However, in reality, this ask will sit alongside increased investment in terms and conditions, including pay. In the current economic context, employers are unlikely to be in a position to invest across the board, with additional workforce costs likely to be reduced rather than directed towards training and development, particularly in a small and medium-sized enterprise (SME) context.

That said, it is undeniable that the workforce capability and capacity crisis facing New Zealand is both immediate and significant. The Future of Work Tripartite Forum – consisting of Government, Business New Zealand and the New Zealand Council of Trade Unions – released its Strategic Assessment of the New Zealand workforce in November 2019. The Assessment resulted in a set of broad strategic workforce priorities, which the Government responded to.

The Tripartite Forum reported that one of the predominant issues facing the New Zealand workforce is the effective matching of workforce skills with jobs that utilise those skills. They also noted that a small proportion of the workforce are missing the foundational skills that support upskilling and reskilling. According to the OECD, solving the skills mismatch issue will mean New Zealand is well placed to boost both wages and productivity.

FPAs – which focus on industries and occupations – present a broad-brush approach to lifting terms and conditions without a clear view as to how they will provide an effective lever to improve the matching and utilising of workforce skills within the context of the evolving nature of work.

The Government has established several channels to facilitate a greater focus on regional and sector level skills across the workforce. Regional Skills Leadership Groups (RSLG) are tasked with developing and implementing regional workforce plans that look to better address local alignment between labour supply and demand, and Workforce Development Councils (WDC) established as part of the Government's wider Reform of Vocational Education, provide for industry specific influence around future skills and training pathways to meet skill demand, into the future.

With these channels already in play, it appears to be more opportune than deliberate to combine the future of work skills agenda with the protection of vulnerable workers, under the mechanism of a FPA system. In our view, efforts would be better placed supporting industry engagement with the existing RSLG and WDC structures to advance workforce planning and support at the regional level, and in the development of industry specific workforce supply to meet demand. As these groups become more established, it would be worth considering how these workforce insights inform the terms and conditions across future-critical workforces.



### Will Fair Pay Agreement really drive efficiencies and productivity?

New Zealand has faced long term problems with its labour productivity, with both labour productivity and productivity growth being lower than that of other OECD countries for many years. Longer working hours and getting more people into work have been the main drivers behind New Zealand's GDP growth over the last few decades, as opposed to increased productivity. Further, according to MBIE, the growth in wages in New Zealand has generally not kept pace with increases in labour productivity in recent years. In essence, New Zealand workers are working longer hours for less reward. With this context in mind, the third main driver behind the introduction of the FPA system is a belief that, by fairly sharing the rewards of economic growth, labour productivity can improve.

However, the complexity of the FPA system, coupled with an onerous, union-centric bargaining regime, will require a significant investment of time and resources for employers and may in fact create more inefficiencies and costs. This burden is likely to be felt disproportionately for small businesses. Small businesses make up approximately 97% of all businesses in New Zealand and employ close to a third of New Zealand workers. These businesses employ less than 20 workers, are mostly independently operated, and often do not have dedicated human resources capability or support teams in place to absorb the additional administrative burden that will come about from FPAs.



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Further, only around 17% of New Zealand's workforce is unionised. This means that a significant majority of New Zealand employers will have very little of the collective bargaining experience and capacity required to effectively engage in the FPA process. Involvement in the process will require significant upskilling and time investment, particularly for employers navigating multiple FPAs in force across their workforce. The required level of communication, coordination and cooperation required for employers to form bargaining parties and have their voice heard is going to pose an unprecedented challenge. As participation in the system would be mandatory, employers would not be able to opt out of an FPA, even if they had no input during the bargaining process at all. Unions, on the other hand, have years of experience and institutional capability to perform the role of exclusive negotiating party on behalf of employees.

For some employers, FPAs will add another layer of bargaining on top of what is already an increasingly complex employment relations landscape. Many employers could be engaged in collective bargaining on multiple fronts - at an enterprise level, through the pay equity regime, and soon on an industry and occupational level through the FPA regime.

In terms of the wider business community, BusinessNZ has withdrawn its support for FPAs, stating that it will not take on the role of employer representative. This may explain why the Government is now proposing changes so that, if no eligible representative steps forward to be a bargaining party on one side (within a set timeframe), the Employment Relations Authority (Authority) has the power to set the terms of the FPA, without any bargaining process and with limited scope for appeals. The same would apply if bargaining proves unsuccessful.

The Authority is already facing significant delays in processing employment relationship problems, with many parties experiencing lengthy delays over the past two years. FPAs will add a whole new level of responsibility onto the Authority's already stretched resources. Ultimately, the effect of this will flow back to employers and employees by creating even longer wait times for resolving employment relationship problems and for the setting of FPA terms. If the FPA system goes ahead, significantly more investment in the Authority - or a whole new institution to govern the new framework - will be needed.

# Fair Pay Agreements in practice – what challenges remain?

**While the Bill has provided clarification to some of the key questions surrounding FPAs, the key challenge that remains is the complexity the new system is likely to bring about. In this regard, we can take learnings from Australia's industrial relations framework.**

Australia's Modern Awards system was introduced in 2010 and sets minimum employment standards (such as minimum rates of pay, overtime and penalty rates, allowances, leave loading, superannuation and redundancy pay) across industries or occupations, as well as procedures for consultation, representation and dispute settlement. The key difference between the Australian Modern Awards system and the proposed FPA System is that awards are not bargained for under the Australian system. Rather, awards are determined by the Fair Work Commission following consultation with unions and employers.

One challenge Australian employers have faced under the Modern Awards system is the complexity in determining which awards apply to which employees. Difficulties have also arisen in Australia where an employee performs a role that could be covered by multiple awards, meaning employers (or the Fair Work Commission) face the challenging task of interpreting and applying the correct modern award. Similar issues are expected under the proposed FPA system. While the Bill does include a mechanism for dealing with situations where the coverage of a proposed FPA overlaps with that of an existing FPA - in which case the agreement which provides better terms overall prevails (as determined by the Authority) - it may still be the case that more than one FPA applies to an employee. Such a situation is almost inevitable as it will be impossible to flush out all possible coverage implications at the time of

negotiating a new FPA, especially as traditional roles continue to evolve. Where this does occur, the Bill does allow for the Labour Inspector and the Authority to make determinations as to whether a particular employee, or group of employees, falls within the coverage of an FPA. However, such a process could be lengthy and it will be difficult for employers and employees to know which terms and conditions apply in the meantime. This may create a practice around constantly monitoring and interpreting FPAs for coverage, creating yet another compliance burden.

The level of complexity involved in accurately calculating wages, benefits and holidays has undoubtedly posed a challenge in Australia. In the New Zealand context, employers already struggle to navigate the complex calculations under the Holidays Act 2003. The FPA system will likely further exacerbate this issue by introducing different employment terms for different groups of employees (including different hours of work, base wage/salary rates, and triggers for overtime payments). This will require employers to re-evaluate, and in many cases, overhaul their payroll system configurations and processes, as well as provide appropriate retraining and additional oversight, to ensure holiday entitlements are correctly and consistently provided. For many employers, this will result in increased compliance costs which we may see being passed onto consumers at a time when inflation is already at the highest it has been in decades.

# What can employers do to prepare?

**Employers should start taking action to ensure they are in the best possible position to handle FPAs in the increasingly likely event that the system is introduced.**



The Bill is not yet law, so Employers should monitor the progress of the Bill as it makes its way through the parliamentary process

to keep up to date with any changes. The public has had the opportunity to make a submission on the Bill. After considering those submissions, the Select Committee will report back to Parliament with a summary of the public feedback and its recommendations. The Bill will then be subject to two more rounds of parliamentary debate before being passed into law. At this stage, we expect the Government will seek to pass the Bill and start implementing the new regime ahead of the next election. [The Ministry of Business, Innovation and Employment](#) website states that the Bill is anticipated to be passed at the end of 2022, with the FPA system expected to commence shortly after.



Employers should start reframing their Employee Value Proposition (EVP) and considering the levers that they have internally to identify

and frame their unique points of differentiation to current and potential employees. The EVP will become an ever more important attraction and retention tool for the workforce, as FPAs level the playing field in the labour market. In Australia's '[What Workers Want](#)' survey, employees expressed that, alongside remuneration and rewards, the things they valued most from their employer included wellbeing, workplace experience, ways of working and career development. Having a clear value proposition around these is smart business.



Employers should start considering how robust their existing HR and payroll processes, systems, capability and oversight

are to enable enduring compliance over many different working arrangements and pay and entitlement types. This may involve undertaking a review of the current state of these processes, making a plan to remedy any deficiencies, and starting to implement solutions.



# How can PwC help?

PwC's Employment Advisory Group brings together our integrated team of experts across legal, tax, risk and assurance, and workforce and change consulting. We work alongside employers to navigate the many and varied challenges and opportunities facing them in today's complex world of work. If you are seeking advice alongside smart business insight, please reach out to us for a conversation.

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