

Workplace Policy Reform in New Zealand:

What are the Lessons for Australia?

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Table of Contents

Acronyms	4
Introduction	5
I. A Landmark Pay Equity Settlement, and Beyond	11
The precedent: A landmark care and support worker settlement	12
Pay equity principles and an amended Act	15
A second pay equity settlement: testing the principles	15
Some outstanding questions	16
Implications for pay equity reform in Australia	17
II. Industry Bargaining with Fair Pay Agreements	20
III. Restoring Employee, Union and Collective Bargaining Rights	25
IV. Closing the Labour Regulation Gap on “Triangular Relationships”	28
V. Minimum Wage Increases	33
VI. The Campaign for a Living Wage	36
VII. Ten Days Paid Domestic Violence Leave	39
Conclusion	42
Appendix 1: Summary of Current and Future Labour Policy Reforms in New Zealand .	43
References	46

Acronyms

EC Act – Employment Contracts Act 1991

ER Act – Employment Relations Act 2000

FPA – Fair Pay Agreement

FWC – Fair Work Commission (Australia)

PSA – Public Service Association

MECA – Multi-employer collective agreement

NES – National Employment Standards (Australia)

Introduction

Consensus is building among economists, commentators, labour advocates, and even mainstream economic institutions (like the IMF and central banks) that the erosion of post-war labour regulations and institutional frameworks has been a major factor behind rising inequality, anaemic wages growth, and macroeconomic stagnation. Employer-friendly labour policies have been the vehicle for a coordinated agenda by corporations and conservative governments to restructure labour relations, in concert with monetary, tax, and trade policies all designed to undermine a proactive role for government in managing the economy.

Once renowned for having among the highest standards of living in the world, New Zealand experienced a particularly brutal trajectory of neoliberal market reorganisation of its public institutions beginning in the mid-1980s. Its well-developed (and globally envied) welfare state was significantly downsized; program spending declined by almost 10 points of GDP, and tax revenues by 5 points, from 1986 through 2012, as conservative governments cut programs and reallocated public funds to business and high-income households in the form of tax cuts (Stanford 2014). Parallel to that dramatic retrenchment of the welfare state, New Zealand's extensive system of labour regulation, conciliation and arbitration was dismantled. That industrial relations system was similar to Australia's. However, unlike Australia (which was able to retain some remnants of centralised wage setting through the Modern Awards system), the arbitration and conciliation system in New Zealand was completely eliminated. The impacts of these painful measures have been severe; for example, IMF research on changes in developed countries' income distribution since 1980 estimated that the decline in collective bargaining and deunionisation has been responsible for as much as one-half of the rise in inequality – and that this impact was greater in New Zealand than in any other industrial economy.¹

Where the active role for government in the economy and wages system in Australia was dismantled more gradually—mediated and guided through prescriptive incremental state interventions²—in New Zealand the regulatory “rug” was swiftly pulled out from underneath its wages system. This began when compulsory arbitration was abolished in 1987 by the then-Labour government, allowing employers to refuse to reach settlement and move to enterprise-level instruments once awards expired.

¹ See Jaumotte and Builtron, 2015.

² Stanford (2018) reviews the history and effects of labour market restructuring in Australia since the 1980s.

For a while compulsory unionism allowed unions to maintain a strong role in industry-level bargaining; however, seven years later the Employment Contracts Act 1991 (EC Act) was introduced by the conservative National Party, constituting an even more radical intervention to individualise employment relationships. This legislation dismantled the awards system, revoked any requirement for employers to reach a conclusion in negotiations, and introduced a specific provision that collective agreements could revert to individual contracts in the event negotiations did not conclude. Individual contracts were radically universalised — in practice imposed on workers without negotiation. The legacy of that fundamental shift is visible today, with 69 per cent of all employees presently on individual contracts (Stats NZ 2016). Alarmingly, survey data reports that around 9 percent of employees (or 171,000) do not have any written employment agreement with their employer at all, which is illegal under current legislation (Stats NZ 2016). Moreover, the EC Act radically redefined collective agreements (re-termed “collective employment contracts”) removing any requirement for union representation or for bargaining to take place, and allowing employers to unilaterally create agreements for two or more employees (similar to the non-union agreement stream still in existence in Australia).

The impact of the EC Act on collective agreement coverage was catastrophic: private sector collective agreement coverage declined from 48 per cent of all private sector employees in 1990 to only 21 per cent in 1995; coverage more-than-halved again to 9 per cent by 2004³, where it has remained for over a decade. Private sector union membership followed the same fate, halving from 43 per cent in 1991 to 21 per cent in 1999, and to only 10 per cent in 2017.⁴

The far-reaching redesign of employment relations in New Zealand is also evident in the declining labour share of gross domestic product (GDP). Figure 1 shows the total payments made to employees including wages, salaries, and superannuation (the most recently introduced and wide-reaching system being “KiwiSaver”⁵) as a percentage of GDP since 1988; the figure highlights key dates when new employment relations legislation was introduced. The labour share declined dramatically from 1988 through

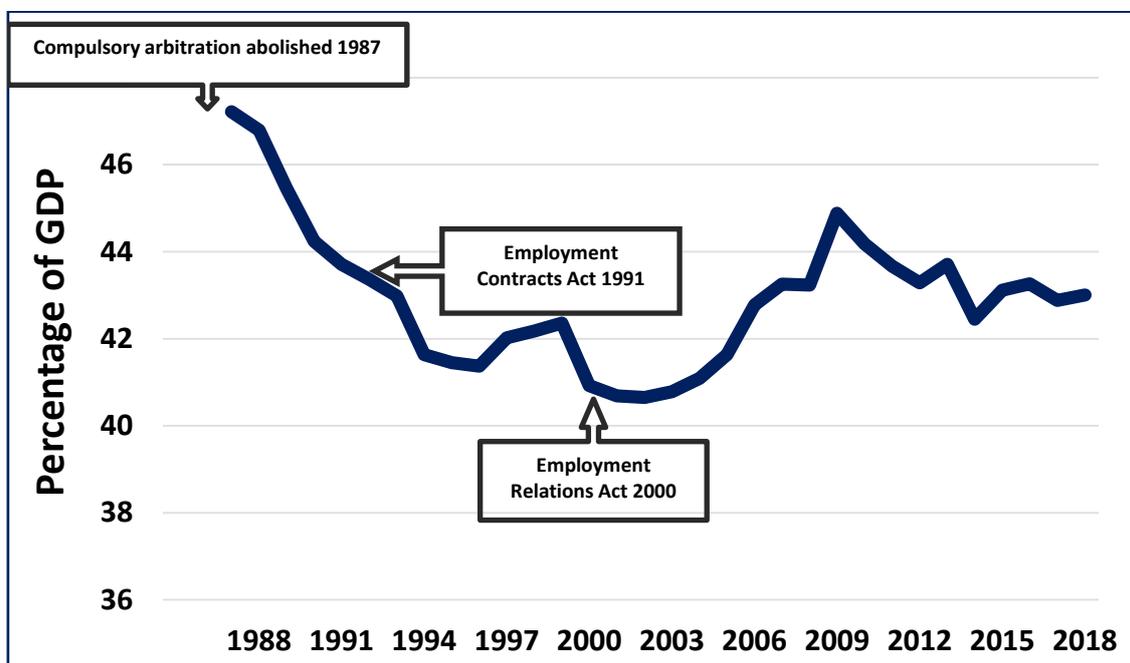
³ Collective agreements were defined from 2000 under the ER Act to be bargained agreements between union members and their employer. This means the non-union ‘collective agreements’ formed under the earlier EC Act would cease to be defined as ‘collective agreements,’ and explains further collective agreement coverage decline from 2000. Data compiled from Foster, Rasmussen, Murrie and Laird (2011). Table 2, p. 193.

⁴ See Centre for Labour, Employment and Work (CLEW) report (2017). Table 1, and CLEW (2018), Table 5.

⁵ KiwiSaver is a voluntary superannuation scheme, with employee contributions matched by employers. The scheme has only been in operation since 2007, however, employers and government have provided other superannuation schemes for employees over many years.

2000 alongside the abolishing of compulsory arbitration (and associated decline in union influence in wage setting) and the introduction of the EC Act (in 1991), reaching a post-war low of just 40.6 per cent in 2002. Amidst the low-wage carnage left by the conservative government, the next Labour government (in power from 1999 through 2008) introduced significant increases to the minimum wage, welfare supports for low-wage workers, and some improvements in employee rights including encouragement of collective bargaining, and introduction of “good faith” bargaining measures through the new Employment Relations Act (ER Act) in 2000. These new measures to support the working poor are visible in a modest turnaround in labour’s share of national income, which rebounded to almost 45 per cent by 2009.

Figure 1. New Zealand labour share of GDP (1988-2018)



Data: Author’s calculations from Stats NZ National Accounts (Income and Expenditure), Consolidated accounts full series: Table 3.1, Gross domestic product and expenditure account (1988-2003), Table 1.1 (2003-March 2018).

However, ultimately the ER Act failed to counteract the damage inflicted upon the wages system in the preceding decade. A conservative government came back to power in 2009, and over its next three terms implemented an even more punitive employment relations agenda. This coincided with workers’ share of GDP resuming a downward trend from 2009–18. Similar to the Fair Work Act in Australia (and its partial unwinding of the most extreme aspects of the preceding WorkChoices legislation), in retrospect New Zealand Labour’s ER Act in 2000 only curbed the most extreme

measures of its predecessor, rather than supporting a more complete and effective reconstruction of a collective bargaining system. Both the FWA and the ER Act focused instead upon prescribing specific rules for the bargaining process (for example, by mandating parties to engage in good faith bargaining), ignoring the deeper reality of workers' limited capacity to reach the bargaining table with meaningful bargaining power in the first place.

The legacy of New Zealand's modest 2000 reforms, exacerbated by subsequent incremental conservative measures, has been a continued suppression of collective bargaining, rising inequality, stagnant wages, and hundreds of thousands of low-wage workers who are unable to move past the minimum wage. At present only 19 per cent of workers benefit from the protection of a collective agreement, and fewer than 1 in 10 in the private sector. Despite having one of the highest labour force participation rates in the OECD (71 per cent) and relatively low official unemployment, more than 1 in 10 workers are not working as many hours as they would like.⁶ Income inequality has increased, with the highest 0.1 per cent of wage and salary earners receiving 17 times the average salary in 2017, while in the same year 48 per cent of all private sector jobs received no pay rise (CTU 2018). Workers' ability to participate in the workplace and contest the terms and conditions of their jobs has been undermined, with a dire need for active policy intervention to rebuild a fairer system.

Against this bleak backdrop, sustained efforts were undertaken by unions and labour advocates to put employment relations back on the national agenda. Now, with the election of a Labour-led coalition government in 2017 with an appetite for employment relations reform, a progressive labour reform program is finally on the horizon. The new government has signalled interest in wage-boosting reforms as part of an overarching goal of transforming the New Zealand economy toward a high-wage, high-skill, high-productivity economy. It has also resuscitated a tripartite vision of policy-making, convening working groups of unions, experts, business and government to develop policy direction for its various initiatives. Unions, particularly public sector unions, have even seen an increase in membership – with union membership and collective agreement coverage as a percentage of all employees both experiencing a small rebound in 2017–18 of one percentage point (CTU 2018).

The government's labour policy reform strategy can be considered as composing two "tranches." The first tranche has focused on removing pay discrimination in women's work through pay equity reforms, and extending employee and union rights to collectively bargain through the Employment Relations Amendment Act. This initial

⁶ Total labour underutilisation was 12.1 per cent in December quarter 2018. From Stats NZ *Labour market statistics: December 2018 quarter*.

phase has focused on restoring those employee and union rights revoked by the previous National government, as well as providing a platform for subsequent “tranche two” policy reforms in 2019. Negotiations among the coalition government partners (including Labour, New Zealand First and the Greens) will determine what specific measures come through in the next phase of reform; however, new industry bargaining instruments in the form of Fair Pay Agreements will be included (discussed in detail later in this report). A private Members’ Bill to expand rights for labour hire workers through the Employment Relations (Triangular Employment) Amendment Bill is also under consideration. Other measures planned by the government for tranche two in 2019 include increasing the number of labour inspectors to enforce employment law and prosecute breaches; reforming the New Zealand Productivity Commission’s mandate to focus on creating high-wage, high-engagement and high-performance employment relations; and legislative changes to more closely align rights and protections for dependent contractors with those enjoyed by conventional employees.

These important and innovative reform initiatives provide timely lessons for Australia, where employment and wages issues are being hotly debated in the run-up to this year’s federal election. Australian unions have launched an ambitious labour policy reform program through the ACTU’s dynamic “Change the Rules” campaign. Meanwhile, wages and inequality have been given prominence in the emerging federal election platform of the Australian Labor Party (ALP), which has endorsed the “living wage”, and committed to modernising labour laws through measures such as limitations on the use of casual and temporary visa work, and allowing multi-employer bargaining in at least some industries. This is an opportune moment indeed for labour advocates in Australia to observe the momentum building for comprehensive labour reform “across the ditch” in neighbouring New Zealand—a country with which Australia shares historical egalitarian labour market traditions.

This report is organised around discussion of seven key labour policy reforms and campaigns recently implemented or currently being developed in New Zealand. Some initiatives have already been enacted (the “tranche one” reforms) and others are still in negotiation and design (“tranche two”). Each initiative is discussed with attention to New Zealand’s conditions, upcoming challenges, and potential parallels with Australia’s own industrial relations “moment” – in an effort to draw out lessons and insights for labour reform on our shores. Together, these seven reform initiatives constitute a wide-ranging, bold effort by labour advocates and a progressive government to reverse a decades-long vicious cycle of low-wage/low-productivity employment relations.

The seven specific reforms and campaigns considered in the report include:

- i. a landmark pay equity judgement and development of a bargaining principles approach to facilitate pay equity claims and settlements economy-wide;
- ii. the introduction of industry bargaining agreements;
- iii. restoration of employee and union rights to collectively bargain through the (recently passed) Employment Relations Amendment Act 2018;
- iv. legislation tabled to extend greater protections against unfair dismissal to labour hire and agency workers, and new collective bargaining rights (though in the original Bill, this element is no longer proceeding);
- v. government commitments to annual increases to the minimum wage;
- vi. the establishment of broad civil society alliances in the campaign for the living wage;
- vii. and the passage of legislation for a universal employee entitlement to 10 days paid domestic violence leave.

The report concludes with a summary of the key reforms; Appendix 1 provides a summary table of all initiatives outlined in the report, and further selected reforms under consideration in 2019.

I. A Landmark Pay Equity Settlement, and Beyond

Despite women participating in the workforce at the highest rate in New Zealand history, women are still more likely than men to be in part-time employment with insufficient hours of work, more likely to be unemployed and more likely to work in the lowest-paid industries (such as caring and services industries). The gender wage imbalance between male and female median hourly wages was 9.2 per cent in June quarter 2018.⁷ Occupational segregation by gender is highly prevalent in New Zealand, with approximately half of all workers in industries where at least 70 per cent of other workers are the same gender.⁸ Corresponding with high levels of gendered occupational segregation, is an historic and systemic undervaluation of work in female-dominated industries – a problem that pay equity reform can address.

Important inroads to address the undervaluation of low-paid female-dominated work have been made since 2013, with pay equity forming a key pillar in New Zealand's multi-pronged strategy to boost wages growth. Historic bargained settlements for care and support workers have been reached in sectors where government is the employer or primary funder, delivering pay increases of up to 50 per cent for tens of thousands of workers. As campaigns to broaden these settlements now spread into other occupations, the government has committed to amending the Equal Pay Act 1972 to formalise settlement principles and guide future pay equity claims. A key feature of the New Zealand pay equity reform process has been an emphasis on implementing a bargaining mechanism to empower worker-led pay equity conclusions, and allow stakeholders to tailor the terms of pay equity measures to the specific circumstances of differing industries. This path holds lessons for Australia's pay equity reforms, likely on the horizon in the event of an incoming Labor government in 2019.

⁷ See Stats NZ 2018. *Labour market statistics (income): June 2018 quarter*. New Zealand calculates the gender pay gap based on hourly median earnings of men and women, where Australia's gender pay gap is generally calculated based on median earnings for *full time workers*.

⁸ See Ministry for Women. 2018. *Occupational Segregation*.

THE PRECEDENT: A LANDMARK CARE AND SUPPORT WORKER SETTLEMENT

The campaign for pay equity has been a strategic focus of New Zealand unions for decades, however, it is only recently that equal pay legislation has been so fully mobilised to enable widespread and significant increases in women’s rates of remuneration. Three significant pay equity events have occurred since 2013; the key dates for in this chronology are outlined in Table 1.

Table 1. Pay Equity Timeline of Events Since 2013

Case/organisation	Stage	Year
<i>Bartlett & Service and Food Workers’ Union v Terranova Homes & Care</i>	Court finds equal pay claims may use male-dominated industry comparators with similar skills, responsibilities and degrees of effort, and initial principles for resolving pay equity claims under <i>Equal Pay Act 1972</i> established	2013
Tripartite Joint Working Group (JWG) on Pay Equity Principles	Statutory principles to guide future equal pay claims developed with bargained increases the preferred approach	2015–16
Social worker PSA members at Oranga Tamariki (government youth services agency) through working group and bargaining process	Claim for first equal pay case based on JWG principles with parties emphasising preference for settlement outside of court	January 2017
Initial 2013 settlement extended to raise pay of 60,000 care and support workers – claim pursued by New Zealand Nurses Federation, Public Service Association (PSA) and E Tū unions	Care and support workers join initial <i>Bartlett v Terranova</i> claim across disability, mental health and addiction services	April–June 2017

Newly elected Labour-led coalition do not proceed with Employment (Pay Equity and Equal Pay) Bill of previous government and reconvene Joint Working Group on Pay Equity Principles	JWG pay equity principles revised	November 2017
Reconvened Joint Working Group	Pay equity principles amended reducing evidential hurdle to establishing claims, recommendations delivered to government	February 2018
Social worker PSA members at Oranga Tamariki endorse settlement	Second successful equal pay settlement finalised with average pay increase of 30.6 per cent	October 2018
First reading of Pay Equity Amendment Bill – amendments to the <i>Equal Pay Act 1972</i>	Legislation reflecting new principles for equal pay claims introduced to Parliament	October 2018
Various unions	Efforts underway to build pay equity claims across other roles	Ongoing

In 2013, care worker Kristine Bartlett and her union, the Service and Food Workers Union (now amalgamated as part of the larger E Tū union), successfully demonstrated pay discrimination in accordance with the Act. In an important judgement that laid the ground for subsequent pay equity efforts, it was found that pay rates in occupations comprised mostly of women could be compared with pay rates in unrelated male-dominated occupations with similar skills, responsibilities and degrees of effort. The 2013 decision allowed other unions to join the claim on behalf of care and support workers in health and disability. A settlement was reached with the government in mid-2017; it will cost \$2 billion over five years, covering around 60,000 workers (who were mostly women and workers on minimum wage).

When the Care and Support Workers (Pay Equity) Settlement Act 2017 came into effect, its legislated pay rise for care and support workers lifted wages growth across the economy. In the year to the September 2017 quarter (after the first July 2017 pay

increase), the labour cost index (LCI) for all salary and wage rates increased 1.9 percent; this was the highest annual increase since the September quarter in 2012.⁹ The Healthcare and Social Assistance sector (the second-largest employing industry with around 200,000 employees) had a marked effect on this increase in the aggregate LCI, with wages in the sector rising by 2.2 per cent in the September 2017 quarter, compared to 0.4 per cent in the previous quarter.¹⁰ Care and support workers received their second pay rise in July 2018, and while it was smaller than the initial increase one year prior, Healthcare and Social Assistance was still the primary contributor to growth in the LCI for the following September 2018 quarter, rising strongly by 1.4 per cent (the average LCI rose by 0.5 per cent across all industries).¹¹ A 2018 survey by Public Service Association (PSA) of membership affected by the settlement illuminated its immediate positive impacts on workers' wages and hours, including:¹²

- A significant increase in pay; prior to settlement more than half of all workers earned less than \$16 per hour; after settlement, 100 per cent of respondents earned at least \$19 per hour, and the vast majority (87 per cent) earned \$20 or more per hour.
- An overall increase in total hours worked, with the distribution of hours shifting toward part-time and standard full-time hours, and away from very long-hours. The number of people working more than 40 hours declined by 7.5 per cent; people working 34–40 hours and 26–30 hours increased after the settlement by around 17 per cent each. This suggests higher wages have allowed long-hours workers to decrease their hours while still meeting their personal financial needs, while increasing hours for those desiring more work.
- A significant decline in the number of people working additional jobs outside of their main job, with an extraordinary 66 per cent decrease in the number of workers in the sector working more than one job.

These results attest to an important and promising improvement in the quality of care work. Even better, this precedent is now being actively extended to other parts of New Zealand's labour market.

⁹ The labour cost index (LCI) measures increases in salary and ordinary time wage rates and is often compared with the consumer price index (CPI) to assess how wages have grown in relation to cost of living increases.

¹⁰ See Stats NZ (2017) for special commentary on the impact of the first pay equity settlement on aggregate wages growth.

¹¹ Stats NZ (2018). *Labour market statistics: September 2018 quarter*, Salary and wage rates by industry. Tables 4.2 and 4.3.

¹² For summary of survey results, see report by Martin, Davies and Ross (2018) for the New Zealand Public Service Association.

PAY EQUITY PRINCIPLES AND AN AMENDED ACT

In the years prior to the finalised care and support worker settlement, the government at the time set up a tripartite Joint Working Group on Pay Equity Principles, tasked with establishing universal principles for guiding future equal pay claims. These initial principles contained critical statements for advancing pay equity including:

- intent to establish remuneration “free from effects of current, historical or structural gender-based differentiation”;
- protection against reduction of employment conditions;
- the need for a swift process “not needlessly prolonged”;
- and a preferred mechanism of good faith bargaining-based principles guiding identification, assessment and resolution of claims.¹³

However, the Employment (Pay Equity and Equal Pay) Bill introduced in 2017 by the (then) National government featured very high evidential hurdles for establishing claims. Consequently, after the 2017 election, the new Labour-led coalition did not proceed with that Bill, instead reconvening the JWG in November 2017 for further deliberations. This reconvened group agreed to leave the initial list of core principles largely intact, while making amendments to make the claims process easier and fairer. The Labour government then introduced the Pay Equity Amendment Bill in late 2018 to formalise these pay equity principles in legislation. The new Bill states that pay equity claims will be progressed within the existing collective bargaining framework, with court mediation and decision-making available in the event that claims are denied or negotiations reach an impasse.

A SECOND PAY EQUITY SETTLEMENT: TESTING THE PRINCIPLES

In the wake of the initial 2013 judgment, unions continued building momentum for pay equity even prior to the 2017 settlement. For example, the PSA submitted a pay equity claim in 2015 for three social workers at a government social services department (Oranga Tamariki). The union argued that the social workers’ pay was lower than what would be paid to male employees with the same or similar level of skills, responsibilities, work conditions, and degrees of effort. This second pay equity case

¹³ See New Zealand State Services Commission (2016), *Joint Working Group on Pay Equity Principles*.

became the first to be progressed in accordance with the JWG principles,¹⁴ using an employer and union working group model with the aim of enhancing relationships between the parties in order to reach a bargained settlement. The working group's assessment began in 2017; an agreement was successfully reached in August 2018; it was ratified by social work PSA members in October 2018, and resulted in an average pay increase for covered workers of 30 per cent. Efforts are now underway by public sector unions to build further pay equity claims across administrative and clerical roles, social and support workers, and allied health workers in the public healthcare system (covering a total of over 150 occupations). Through extensive lobbying, the initial 2017 settlement was also extended to mental health services (after initially being specifically excluded from the settlement).

SOME OUTSTANDING QUESTIONS

While New Zealand has taken some big steps in advancing pay equity, there are some outstanding questions about how the new mechanism will be operationalised outside of a public sector context – especially in instances where collective bargaining frameworks do not exist. Both of the recent pay equity settlements were reached in the public sector—a large workforce either directly employed by the government or through contracts for services that are substantially funded by the government (and hence where government retains some control over labour standards through procurement rules and fiscal parameters). Moreover, union density in New Zealand is substantially higher in public sector industries, with around 43 per cent density in the broad healthcare and education sectors (around half of all union members are in these two industries alone);¹⁵ this gives unions more capacity and clout to coordinate large claims. Private sector workplaces are typically much smaller, and private sector union density averages only 10 per cent. While it will be a legislated requirement that employers contact all employees who may be affected by a claim, there is no requirement for wages settlements to be generalised across firms in a given industry; this will likely slow down the claims process, and generate significant employer opposition if increased labour costs are not imposed on all employers in a given occupation or industry. With no system to implement pay standards across industries (and no system of uniform minimum standards similar to the Modern Awards in Australia), generalising settlements across many small firms amidst diminished union capacity will be a challenge.

¹⁴ The case followed the JWG principles in their initial form, since the second reconvened JWG had not yet begun its work.

¹⁵ Most recent union membership statistics at Stats NZ (2016), *Union membership and employment agreements – June 2016 quarter*.

A collective bargaining approach to settling pay equity claims carries considerable potential to expand unions' bargaining infrastructure and their wider social profile and legitimacy on issues of wages and gender equality. However, it is not clear how pay equity claims will be supported and facilitated in workplaces where collective bargaining does not exist. Currently only 10 per cent of private sector employees are covered by a collective agreement, compared to 58 per cent in the public sector (Centre for Labour, Employment and Work 2017). The pay equity principles stipulate no requirement that claims be implemented during bargaining for an agreement, but a collective bargaining mechanism clearly generates the required infrastructure (and leverage) for achieving optimal settlement outcomes. For instance, in the case of the social worker settlement at Oranga Tamariki, the working group approach was agreed to as part of collective agreement negotiations with the PSA in the year prior – so collective bargaining played a crucial role in setting the whole pay equity process in motion.

Bargaining occurs in New Zealand at the enterprise level; however, once new pay equity principles are legislated, this may provide an opportunity to test other recently introduced collective bargaining reforms such as Fair Pay Agreements and multi-employer bargaining instruments. With the passage of the Employment Relations Amendment Bill in December 2018 (discussed later in this report), employers are now required to demonstrate “reasonable grounds” for opting out of multi-employer collective agreements (MECAs). It remains to be seen if pay equity will constitute justification for multi-employer bargaining.

IMPLICATIONS FOR PAY EQUITY REFORM IN AUSTRALIA

In Australia current policy avenues to pursue equal remuneration include workplace-level initiatives, individual litigation, and more substantially through equal remuneration principles in the fabric of the Fair Work Act which are observed by the Fair Work Commission (FWC) in minimum wage and Award rate setting. But pay equity progress has been hampered by the weakened capacity of industrial parties to enforce, test, and extend this legislation. At the workplace level, private sector employers are required to report pay information to the Workplace Gender Equality Agency (WGEA) under general equity principles outlined in the Workplace Gender Equality Act 2012. While the data collected provides a tool for intervention into private sector wage structures, the WGEA lacks regulatory “teeth” to pursue employer non-compliance. Minimum standards and benchmarks are also not stipulated by the Act beyond the requirement employers merely develop a “strategy” for achieving equal gender

remuneration (rather than evidencing actual pay equity outcomes). Another avenue for pursuing pay equity is individual litigation in courts or tribunals under anti-discrimination laws, however those individual claims do not link to broader workplace or sectoral gendered pay reviews.¹⁶

Equal remuneration is outlined in the FW Act minimum wage objective and is one factor the FWC must take into account in minimum wage setting (though alongside other economic factors such as business competitiveness and viability). In theory this could be one of the strongest pay equity policy levers, with women workers more likely than men to be concentrated in minimum wage employment with restricted access to collective bargaining, but the FWC has given only shallow attention to the pay equity principle to date (Charlesworth and MacDonald 2015). Another significant pay equity avenue is the 4-yearly Modern Awards review, with potential to raise minimum Award wages and the “floor” for women workers – which would then help to achieve better pay outcomes in collective bargaining. However, this avenue remains untested, in part due to tension in the Modern Awards objective created by a requirement on the FWC to examine impacts of increased employment costs and regulatory burden on business.¹⁷ The FWC is also empowered to make equal remuneration orders for Awards, potentially lifting the wages of large groups of workers across sectors. However, the FWC has been hesitant to allow these equal remuneration orders to create any precedence for wage intervention into other feminised industries. For instance, unions in the social and community services sector brought a successful case for equal remuneration in 2010, but the FWC refused to include evidence of gendered undervaluation in its decision, severely limiting the ability of the case to form any future precedence. In sum, there is no effective way of reviewing terms and conditions in Modern Awards to remove historical, gender-based undervaluation of work in female-dominated industries.

Another glaring hole in Australia’s pay equity system is the absence of a framework for achieving equal remuneration through collective bargaining; the FWC is not obliged to consider pay equity when approving enterprise agreements, and legislation does not empower women workers to pursue bargaining-led solutions (as is being implemented in New Zealand). As such, what seems a comprehensive pay equity policy approach, actually fails to meaningfully intervene into the design of wage structures. This is why the path New Zealand unions have carved out to advance pay equity through raising

¹⁶ Despite pay equity laws being in place for over 30 years, very few individual pay equity cases have been heard by courts or tribunals. See Charlesworth and MacDonald (2015) for a comprehensive review of Australia’s gender pay equity legislation.

¹⁷ Fair Work Act 2009 - SECT 134 (f) (g).

the industrial capacities of women workers to “motor” pay equity cases is instructive for Australia.

In December 2018 the ALP committed to introducing measures to tackle gendered pay discrimination, as part of a broader workplace relations platform to address insecure work and low wages growth. Proposed measures include the renewal of a pay equity unit within the FWC, and the creation of pay equity principles for reviews of Awards (that will *not* require male comparators for assessing claims). Unlike in New Zealand where new pay equity statutory principles will be operationalised through the existing bargaining framework, it is unclear whether the ALP’s strategy would link pay equity processes to existing (or new) collective bargaining mechanisms, or instead would restrict pay equity decisions to FWC Modern Award review cycles. A concurrent announcement by the ALP to permit multi-employer collective bargaining in specified low-wage industries, and potentially in other industries where enterprise bargaining is failing, could open up other mechanisms for pursuing pay equity claims; however, the details of how multi-employer bargaining would work are yet to be detailed. Certainly, New Zealand’s experience integrating collective bargaining directly into the pay equity process has brought many benefits, ensuring that settlements reflect the specific conditions of each industry, and creating a more participatory, less technocratic process.

Despite foreseeable teething problems with the bargaining mechanism, the pay equity initiatives pursued in New Zealand mark a momentous change in how women’s work is recognised, valued, and funded. It demonstrates to Australian equality advocates that worker-led bargaining principles can be invoked to deliver immediate improvements in women’s wages, and in wages growth overall. The New Zealand example also shows that a principles-based approach that brings employees, unions and employers to the table can foster improved workplace relations; the strategy also carries the potential to facilitate new bargaining infrastructure in workplaces and industries where collective agreement coverage is very low.

II. Industry Bargaining with Fair Pay Agreements

Expanding the scope of bargaining beyond the enterprise level is a key issue on the horizon of labour policy reform in Australia, but in New Zealand progress in introducing industry-wide bargaining structures is well underway. A new system of “Fair Pay Agreements” (FPAs) is emerging from an increasing consensus in New Zealand that the current workplace relations system – based on individual contracts for most workers, with only minimal enterprise-level bargaining – has failed to deliver decent wages and fairer income distribution. The consequences have been marked; New Zealand has above-OECD-average labour market participation rates, but the quality and pay of many jobs have been poor. This has contributed to holding New Zealand’s economy in a low-wage, low-productivity cycle.

FPAs would allow representative employers and employees to create industry-wide agreements that set minimum terms and conditions of employment for all employees within the scope of the agreement – including wages, hours, leave, allowances, weekend and evening rates, and more. Industry-wide agreements are being promoted by the new government as one component of a broader strategy to break out of the country’s weak long-term productivity record. The goal is to remove workers’ wages from the firing line of competition, incentivising employers to invest in productivity-enhancing measures (since lower-productivity firms would no longer be able to “subsidise” their poor productivity performance through sub-par wages). Other planned policy initiatives to spur transition to a high-wage, high-productivity, high-skill economy include increased investment in skills, research and development, and technology.

In the tripartite policy tradition of the current Labour-led government, it convened a Fair Pay Agreement Working Group in mid-2018 comprised of business, union representatives, and legal and economic experts. The group was tasked with working through key scope and design questions for FPAs. The Minister for Workplace Relations and Safety mandated in the group’s Terms of Reference that the model proposed needed to be compatible with the existing employment relations and standards system, including the diversity of agreement forms (individual employment agreements, enterprise and multi-employer agreements, and contracts for service), existing collective bargaining rules, and the minimum employment standards (Office of the Minister for Workplace Relations and Safety 2018). As such, FPAs would establish

minimum industry-wide conditions, with employees and their unions able to then bargain for enterprise-level agreements above FPA minimums (similar to Australia's Award and enterprise bargaining systems).

The Fair Pay Agreements Working Group returned with its report and recommendations for a FPA framework in February 2019, which are being presently considered by Government. The recommendations include¹⁸:

- Bargaining for FPAs can only be initiated by workers and their union representatives, triggered in the case of a 10 per cent (or 1,000 workers, whichever is lower) threshold within the sector or occupation (including both union and non-union workers); alternatively, a “public interest” trigger can be invoked where there are “harmful labour market conditions” in the nominated area, with an independent body established to determine if trigger conditions have been met.
- All *workers* (not just employees) should be covered by FPAs to ensure all workers performing the same work receive the same employment conditions, regardless of employment status; this would ensure any new regulations do not lead to labour law arbitrage and a proliferation of non-standard forms of work.
- The occupation or industry unit for the FPA should be negotiated by parties involved, with limited exemptions available to individual employers from the agreement.
- Legislation will set the minimum standard content for FPAs but parties will be able to bargain for additional conditions; collective agreement conditions must equal or exceed those outlined in FPAs.
- Bargaining representatives should be nominated by parties to the agreement, with involvement of parties encouraged (including paid meetings available to elect and instruct representatives); costs of bargaining should not fall unreasonably on parties.
- Since industrial action during FPA bargaining was ruled out by Government in the Terms of Reference, conciliation should be used wherever possible at the Employment Court, with arbitration at the Employment Court the final means of reaching agreements and settling disputes.

¹⁸ See full Fair Pay Agreements Working Group report at Ministry of Business, Innovation and Employment (2018).

The high-level recommendations offered by the Working Group are a promising start. New Zealand unions will have an opportunity to build capacity to reach the necessary 10 per cent threshold to trigger FPA negotiations and build membership to ameliorate conditions of very low private sector union density (especially among the most vulnerable workers that FPAs are intended to reach). The government has already disclosed that it is unlikely there will be more than a few FPAs negotiated within their first term, with Prime Minister Jacinda Ardern mentioning bus drivers as one example of an occupational category that could benefit under a future FPA system.¹⁹

Despite its early stages of development, FPAs are shaping up to be an important aspect of the emerging collective bargaining reforms in New Zealand. Pay-equity reforms in female-dominated industries have opened the door to developing industry-wide approaches to wage concerns, but non-female-dominated industries (particularly in the private sector) are also in need of instruments that allow workers to bargain for higher pay and better conditions. In this ongoing dialogue, industries with entrenched low wages and low productivity are being identified by government as “labour market failures” in need of remedy through FPAs (Office of the Minister for Workplace Relations and Safety 2018, p.7). FPAs and pay equity claims could thus function as complementary industry-wide instruments; alongside enterprise and limited multi-employer bargaining, they could inject much-needed support for wage increases, union membership, and improved coordination, security and health and safety.

One challenge for unions will be to ensure that employees benefiting from collectively negotiated pay and conditions then join and contribute to the unions that achieved this progress. FPAs will provide opportunity for unions to demonstrate their value to workers in negotiations for FPAs, but any automatic extension of union-negotiated conditions to the majority of non-unionised workers raises the risk of FPAs instituting a free-riding regime (like that in Australia). At present, bargaining fees, through which non-union-members contribute some payment towards the negotiation and maintenance of collective agreements, are permissible features of collective agreements in New Zealand (unlike Australia, where they are disallowed). One potential avenue, recommended by the FPA Working Group, would be for bargaining fee provisions to be included within FPAs; unions could then garner sufficient resources (and presumably attract more members) to continue effectively representing workers under that agreement. In addition to bargaining fees and levies, the Working Group has also suggested bargaining costs could be funded through Government financial support. The funding approach incorporated within the FPA system remains undecided.

¹⁹ Ardern interview with Corin Dann at Gale (2017).

The introduction of industry-wide bargaining agreements in New Zealand is highly relevant to Australia, given the strong union campaign in support of similar arrangements here. Relaxing current restrictions that effectively prohibit multi-employer or industry-wide bargaining has become a central issue in recent labour policy debates. The Australian Labor Party (ALP) has indicated it would, if it forms government, move to extend multi-employer bargaining to industries where existing collective bargaining arrangements have not been effective (citing examples such as early child education and security). Implicit in the ALP's commitment to expand the scope of bargaining is an acknowledgement that the Fair Work Act and current collective bargaining settings are not up to the task of lifting workers' wages (including extending bargaining rights to workers in labour hire, gig and casual work, and small businesses). Previous research by Pennington (2018) indicates that the sharp decline in private-sector EA coverage in recent years has not been confined to low-wage industries. In fact, *almost all* private-sector industries in Australia experienced large declines in the both the number of current EAs since 2013, and employee coverage by those EAs. This supports the conclusion that Australia's unprecedented deceleration of wages growth in the last five years is associated with the widespread erosion of collective bargaining under the current enterprise bargaining system.²⁰

Where legal challenges regarding the employment status of gig workers in Australia have had limited success,²¹ one promising aspect of New Zealand's proposed system of FPAs is the opportunity to extend collective bargaining rights to workers outside of the standard employee relationship.²² This could include "on-demand" workers with digital platforms, other nominally independent contractors, and workers hired by secondary

²⁰ For a comprehensive analysis of the slowdown in Australian wage growth since 2013, see the essays in Stewart et al. (2018).

²¹ There have been two major cases testing the presence of an employment contract via unfair dismissal claims among gig workers for companies Uber and Foodora. In December 2017, the Fair Work Commission (FWC) decided that an Uber driver was not an employee under the Fair Work Act since the driver was not required to undertake work for Uber, dismissing the driver's claim of unfair dismissal. While the ruling did not result in any expansion of the definition of 'employee' to gig workers, the FWC recognised growing tension between traditional employment contract tests in labour law and the nature of work in an evolving economy. In November 2018, the FWC ruled that Foodora had unfairly dismissed a delivery rider. Unlike in the earlier Uber case, the FWC considered Foodora to have a substantial degree of control over its rider workforce through rostering practices, and decided they were employees rather than contractors. The Victorian state government is currently conducting an inquiry into on-demand work, and exploring legislative and regulatory options to strengthen the rights of gig workers. See Stanford and Pennington (2018) for the Centre for Future Work submission to the inquiry.

²² The Terms of Reference for the FPA working group indicate non-standard employees may be covered by an FPA since any proposed framework must mitigate against FPAs creating a 'two-speed' labour market structure, deepening disparities in employment contracts between workers.

employers (such as through labour hire arrangements). There are also already signs that legislative barriers to extending employee rights to all workers will be confronted with new labour hire measures being considered by the Parliament this year (discussed later in this report), as well as assurances from government that it intends to more closely align the rights of “dependent” contractors with employees.

III. Restoring Employee, Union and Collective Bargaining Rights

A suite of labour law reforms to improve unions' ability to access and organise in workplaces and collectively bargain were passed by the Labour-led government in 2018 through the Employment Relations Amendment Act (into effect in May 2019). The Act restores some collective bargaining provisions and employee and union rights that existed under previous iterations of the Employment Relations (ER) Act, but also introduces new provisions to strengthen the overall legal framework in hopes of strengthening unions' capacity to organise and re-build their presence in modern workplaces. With these changes, New Zealand's industrial relations framework is on course to become less punitive and more supportive of collective bargaining than is the present case in Australia. Even prior to the passage of this Bill, New Zealand's laws required no compulsory notice for union right of entry to workplaces, nor prescribed notice periods for industrial action (the law simply states that notice has to be given). The new legislation will restore certain earlier ER Act conditions including:

- reinstatement of rest and meal breaks;
- reinstatement of employment as the primary remedy in the event of unfair dismissal;
- ending exemptions for small business from meeting minimum protections for vulnerable employees in cases of business restructuring (giving affected workers more time to find new employment);
- restoration of the "30-day rule" which acts as a buffer against employer attempts to offer higher pay on individual contracts with inferior conditions (instead requiring that new employees are employed under terms consistent with the prevailing collective agreement, and after this period employees can then negotiate individual agreements with employers);
- and the limiting of 90-day trial periods to firms with fewer than 20 employees.

Other features of the Act go further than just restoring previous provisions, and take new steps to restore a better balance of bargaining power in New Zealand workplaces. Changes which lift restrictions on the day-to-day functioning of unions in workplaces include:

- improving union access by allowing union representatives access to workplaces where a collective agreement is in force or where collective bargaining for an agreement is underway;
- changes prohibiting discrimination by employers in relation to union membership and involvement in union activity;
- the introduction of paid time for union delegates to undertake their representation duties (the first time since 1991 employee-delegates have been given statutory recognition); and
- new information-sharing requirements on employers, to provide new employees who are not union members with union membership forms, and information about the union, their collective agreement, and related matters.

An additional set of measures in the new Act seeks to remedy weakened collective bargaining structures. These include both restored measures from earlier labour law iterations, and new measures:

- improving the legitimacy of collective agreements through requiring agreements to set out information on the rates for wages and salaries payable to employees, including the methods of calculating wages, and how they may increase during the term of the agreement;
- addressing the practice of employer “surface bargaining” through a requirement that parties bargaining for a collective agreement conclude the agreement as a duty of good faith bargaining, unless there is a genuine reason based on reasonable grounds not to (applies to both enterprise and multi-employer agreements);
- restoration of the “first mover advantage” allowing unions to initiate collective bargaining 20 days before employers, thereby allowing unionised employees to determine the details of bargaining claims and limiting the possibility of employers frustrating the bargaining process; in the case of MECA bargaining, this advantage allows unions to identify the employers that must bargain in the initiation notice; and
- Some steps toward expanding bargaining scope to multi-employer agreements (an additional instrument to the industry-wide Fair Pay Agreements discussed above).

Three of the more controversial proposals in the original Bill were challenged by New Zealand First: one of the Labour Party’s coalition partners. These proposals were then

amended after negotiations between the parties. A proposal to reinstate the rights of unions to access workplaces without employer consent was amended; it now requires consent from an employer where union members are not covered by, or bargaining for, a collective agreement. However, an employer cannot unreasonably deny access and must provide an alternative, more convenient time for union representatives to meet employees. A proposal to disallow employers to opt out of a multi-employer collective agreement (MECA) was also amended; it now allows employers to opt out of MECAs if they can prove through an application to the Employment Relations Authority (and the Employment Court in the case of an appeal) that doing so would be “on reasonable grounds”. This will assist in encouraging employers to the bargaining table, but there remains no requirement for employers to settle MECAs. Finally, Labour’s initial proposal to repeal the rights of all firms to use 90-day trial periods for their employees was amended to allow 90-day trials in firms with less than 20 employees.²³ Probation periods can still be used by medium and large firms and must be outlined in the employment agreement.²⁴

The outcome of New Zealand’s attempt to enhance the potential for multi-employer bargaining provides insights for Australia, given the ongoing discussions here about the future of multi-employer bargaining. While the New Zealand legislation, reflecting a compromise among the parties in the governing coalition, provides some employer ability to opt out of MECAs, new requirements on business to demonstrate “reasonableness” (and the new tests established to prove reasonableness) could provide grounds for employees and their unions to contest what constitutes “reasonable”. The new legislation also begins to lay the groundwork for future claims for bargaining scope expansion, by incentivising unions to develop cases for grouping certain employers and certain occupational and industry clusters. Moreover, where pay equity laws are amended in the coming year, this will open another avenue where employers in largely feminised occupations and industries may be required to undertake multi-employer bargaining. Altogether, then, the New Zealand reforms are clearly and significantly enhancing the prospects of collective bargaining at multi-employer, industry-wide, and occupation-wide levels, and this will establish an important precedent as Australians debate similar changes in our labour laws.

²³ Research from the New Zealand Treasury (2016) indicated that allowing this 90-day trial for business had not increased employment (including of disadvantaged jobseekers), as had been predicted by advocates of the measure.

²⁴ There is no limit to the length of a probationary period.

IV. Closing the Labour Regulation Gap on “Triangular Relationships”

The standard form of employment has become less prevalent in many OECD countries since the 1980s. Insecure work arrangements in various forms²⁵ – once discouraged in post-war labour markets through the combined effects of policy, unions, and economic circumstances – have once again proliferated. Temporary, labour hire, casual, independent contractor and “gig” work are all examples of insecure work that have re-emerged in recent years. Many factors have contributed to the resurgence of insecure and precarious work arrangements, including chronic unemployment and underemployment, changes in technology, and new business models. But the vacuum in labour regulation regarding the status and protections for workers in insecure jobs, typically justified by the need for labour market “flexibility”, has certainly facilitated the growth of precarity. Labour hire and temporary employment are common across many industries in New Zealand, including construction, manufacturing, horticulture, viticulture, entertainment, tourism, hospitality, retail and healthcare. In fact, New Zealand ranks as having the weakest regulation of labour hire work in all of the OECD.²⁶

To start to plug this regulatory hole, labour advocates are now seeking to strengthen the employment rights of labour hire workers.²⁷ One such measure is the introduction of new private Member’s Bill by Labour’s Kieran McAnulty: The Employment Relations (Triangular Employment) Amendment Bill. The Bill aims to address the wages and conditions differences experienced by employees who are legally employed by one business (the labour hire company or employment agency), but work under the control of another business (a host employer). These triangular employment relationships reflect the practices of labour hire agencies that employ workers and then contract their services to other firms. Firms pay an agency fee to the labour-hire business for costs of recruitment and administration; employees perform services for the host employer, but are paid by the labour-hire agency. The Bill proposes to extend labour hire employees rights to pursue employment grievances against their host firm. The

²⁵ See Carney and Stanford (2018) for a comprehensive review of the various forms of insecure work and their prevalence in Australia’s labour market.

²⁶ See Figure 2.3 ‘Regulation on temporary-work-agency employment’ in OECD (2013).

²⁷ For instance, the Labour-hire Workers Network was established by the New Zealand Council of Trade Unions to advocate for labour hire workers’ rights and coordinate campaigns for policy reform. See www.lwn.org.au.

Bill also originally proposed to give labour hire employees the same collective bargaining rights as those employees they work alongside in their host workplace, however, this portion of the Bill did not proceed after the Select Committee review stage in December 2018. Despite not progressing to the second reading, the collective bargaining proposals inform Australians both what is possible for strengthening the employment rights of labour hire workers, and how contestation may be prepared for.

Statutory ambiguity over which party is accountable for the rights and entitlements of labour hire employees has served to undermine the pay and quality of employment of those workers. For this reason, casual employment on a contracting basis is common in labour hire work, with associated issues of low wages, insecurity, lesser conditions (compared to permanent employees in the host firm), and limited access to skills development and training. Temporary and labour hire workers also face greater health and safety risks, since workers always new to the workplace are more vulnerable to workplace injury. The original Bill proposed that temporary and labour-hire workers be provided a copy of the collective agreement in their workplace upon commencing work, and that they receive pay and conditions no worse than those of the agreement. To gain access to the protections provided, temporary and labour hire workers would need to work for a firm that has a collective agreement, and would need to be a member of the union party to that agreement. Unlike Australia's bargaining system where unionised employees nominate the union as their bargaining representative, and where the wages and conditions reached in the collective agreement apply to all employees (union and non-union), collective agreements can only be negotiated for union members in New Zealand.²⁸ As such, the inclusion of requirement of union membership for employees in triangular relationships to access collective bargaining rights is an extension of existing practice. Overall, since the wages and conditions of labour hire workers are often below those in agreements, the novel collective bargaining proposals in the original Bill would have worked to lift wages and create a strong incentive for labour hire workers to unionise.

Under current legislation, a business using temporary employees can ask that agencies "take back" an employee and have them replaced if the host employer deems the employee's capability, productivity, or attitude inadequate. Under the proposed legislation, employees in triangular employment relationships will gain the right to lodge personal grievance claims against both the agency and the host employer. This will open up access to mediation in the case of unfair dismissal, and strengthen overall legal protections for employees against unfair dismissal. For a country with regulations regarding unfair dismissal that are recognised as among the most "relaxed" in the

²⁸ Employees who are not union members may also pay a bargaining fee to the union to be covered by the collective agreement in their workplace.

OECD,²⁹ this is a significant step forward. Faced with the risk of increased litigation costs, host employers may be more reluctant to use labour hire workers as a cost-saving strategy for managing fluctuations in demand.³⁰

If the collective bargaining measures proposed in the original Bill had progressed, this would have legally extended employment liability to host employers, undermining the cost advantages offered by labour hire agencies. This would have limited the presence of harmful insecure employment arrangements in the New Zealand labour market and, in turn, supported growth in standard employment. Temporary and labour-hire workers could have gained immediate increases in wages (as wages are harmonised with other workers in the host firm), and new employee rights and protections under collective agreements. Limiting the use of precarious workers to undermine wages and conditions of employment would carry the benefit of strengthening the status of the permanent workforce. Moreover, the legislation would likely have altered the structure and functions of both labour hire agencies and the firms which use their services, with the resulting increases in costs of sourcing and deploying labour hire making it more likely that host employers “in-house” the HR functions currently provided by labour hire agencies.

In a submission on the proposed legislation, Business NZ (2018), the peak body for New Zealand employers, argued that employers have become dependent on short-term work and can no longer fulfil permanent engagements. The construction industry was cited as an example of an industry dependent on access to the required type and quantity of skilled workers on an “as needed basis”. Much of the work undertaken in the construction industry (including upkeep of core infrastructure) is undertaken through a combination of a core permanent workforce, usually on a collective agreement, and temporary and labour hire arrangements used for particular projects. But some projects such as road construction are typically undertaken entirely through contracted labour. Like other sectors, the construction industry benefits from a whole suite of government supports and policies – including infrastructure spending, training funds, tax incentives for investment, and other subsidies and supports. It seems unreasonable, given this public support, that construction workers should then experience permanent precarity through the widespread use of labour hire. In short, the example of labour hire in construction highlighted by Business NZ exposes the

²⁹ New Zealand has weaker unfair dismissal rights than the US, and on par with Saudi Arabia. See OECD (2013), p. 87.

³⁰ The disincentive effect of being subject to mediation and arbitration in dismissal cases is affirmed by a survey of New Zealand employers, which found that the costs of labour disputes resolved in-house were up to 20 times lower than formal mediation of disputes resolved through courts, and took one-fifth as much time (New Zealand Department of Labour 2008).

flawed and harmful logic underpinning labour hire and other insecure employment models: namely, the assumption that workers' right to some security in employment should somehow be subsumed to the priorities of contracting-out and other "flexible" business models. Contracting out, on-demand platforms, and other forms of insecure work all depend on the slicing and dicing of work into smaller sub-projects or tasks, each of which is put out to competitive tender. This "projectisation" of core economic and social functions (including essential public infrastructure) is common in these arrangements: the public sector outsources discrete projects or services to the private sector (as widely occurs in healthcare and social services for example). This ongoing fragmentation of productive activity, and the associated deployment of labour on an "as needed" basis to perform these discrete projects or functions, are intertwined and mutually dependent phenomena. This model is harmful to both workers' wages and conditions, and to long-term productivity and innovation.

Reform initiatives such as what was contained in the original Triangular Relationships Bill can shift employer incentives away from the deployment of low paid, insecure work (in this case, away from the use of secondary employers and the labour hire system), with resulting benefits for job quality and macroeconomic performance. The financial viability of labour hire agencies would certainly have been affected by these measures were they implemented, but with the effect of encouraging actual producing firms (the former host employers) to increase their own investments in other productivity-raising measures (such as new technology). This could support the growth of larger, more competitive firms able to manage a larger and constant flow of projects (thus reducing troughs in demand, and stabilising the flow of production), and in turn support the provision of higher-waged and more secure employment arrangements.

Australian regulations regarding temporary or labour hire arrangements are also relatively weak.³¹ The Fair Work Commission developed a new model term in 2018,³² allowing casual employees with regular hours to request conversion to permanent positions; this model term will be included in all Modern Awards, and will apply to casual, fixed-term and labour hire employees. Similar provisions exist in some enterprise agreements. However, employers can refuse requests on "reasonable" grounds. Collective agreement coverage often excludes labour hire workers and contractors, who can thus be employed on inferior terms and conditions to those of their colleagues performing the same work. Other initiatives to extend protections to labour hire workers have been led by State governments in Queensland and Victoria;

³¹ Australia ranks almost as badly as New Zealand in the OECD's index of employment protection regulations, for example (OECD 2019b).

³² See *4 yearly review of Modern Awards decision on casual and part-time employment*: [2017] FWCFB 3541.

they have developed labour hire licencing schemes that impose certain requirements for labour hire firms to qualify for licensing, including reporting obligations for public inspection.³³

The Triangular Relationships Bill passed its first reading in March 2018 and the Select Committee delivered its proposed amendments in December 2018, including the removal of rights of labour hire employees to be covered by the collective agreement of their host employer, diluting the Bill's collective bargaining measures. With the Bill approaching its second reading, the process demonstrates some feasible steps that can be taken to start limiting the growth of insecure work. Crucially, the original initiative included measures which would extend the legitimacy of collective bargaining as the basis for accessing new rights for workers in labour hire positions. This linking of improved labour standards, to growing the institutional capacity of workers (through unions and collective bargaining), is a theme that is apparent across the whole suite of labour policy reforms underway in New Zealand.

³³ A similar system in South Australia was recently abolished by the new government there.

V. Minimum Wage Increases

Strong statutory minimum wage protections send a signal across the labour market about what society accepts as an acceptable standard of living for workers, and are a precondition for an inclusive economy and fair society. Ensuring that minimum wages are reviewed and increase alongside average wages and productivity is an important backstop against rising inequality; in this way the wages of the lowest paid workers will rise at least proportionately with average wages. It is an important policy measure for ensuring workers (especially low-paid workers) gain a greater share of the national income they help produce. It is also another labour policy area in which New Zealand has made significant progress recently. For New Zealand, strengthening the minimum wage is of particular importance due to the large proportion of workers who are paid according to legal minimums – currently set at \$34,320 per year, or \$660 per week. Advocates argue that this minimum is inadequate relative to the actual costs associated with a decent standard of living; for example, Waldegrave, King and Urbanova (2018) estimate the minimum wage for a full-time worker falls \$162 per week short of a true “living wage”.³⁴

Table 2. Annual minimum wage increases in New Zealand

Date of increase	Amount	New minimum wage (per hour)
April 2018	75 cents	\$16.50
April 2019	\$1.20	\$17.70
April 2020	\$1.20	\$18.90
April 2021	\$1.10	\$20

Upon taking office in 2017, the New Zealand Labour-led coalition immediately increased the minimum wage by 75 cents (or 5 per cent) to \$16.50 per hour, effective April 2018. The government went further, pledging to increase the minimum wage

³⁴ For a full report outlining the method and outcomes of the 2018 living wage review, see Waldegrave, King and Urbanova (2018).

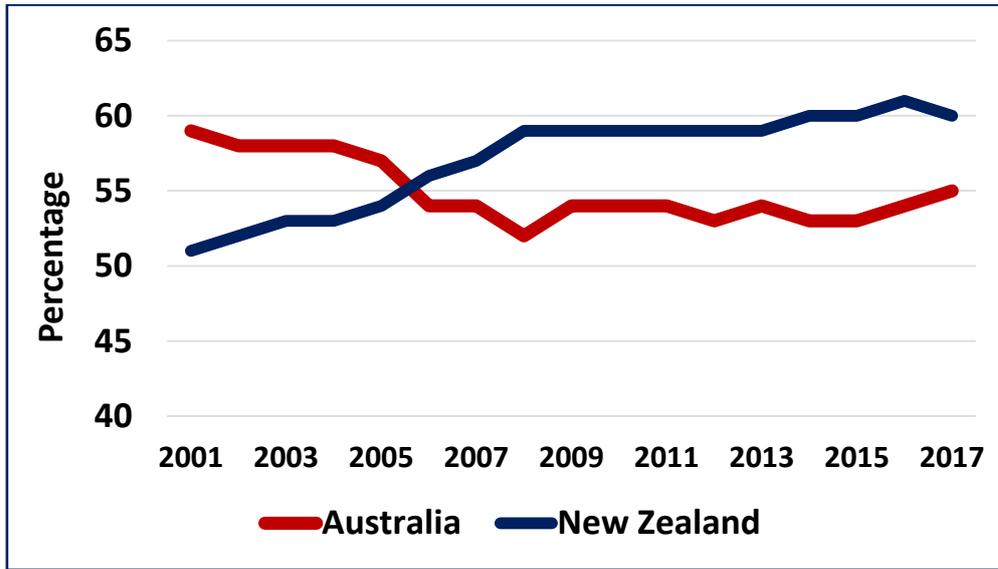
annually, reaching \$20 by 2021. Table 2 outlines the schedule of increases the government has committed to over the next four years, and the final minimum wage (per hour) at each increment. The next increase of \$1.20 in April 2019 will raise the minimum wage to \$17.70 per hour.

Together, increases in the minimum wage and the care and support worker pay equity post-settlement (discussed above) have accelerated overall wages growth. In the June quarter labour cost index (LCI) figures released after the first April 2018 minimum wage increase of 75 cents, the LCI rose by 0.5 per cent for the quarter, and by 1.9 per cent for the year. Excluding the combined impact of the minimum wage and care worker settlement from the LCI figures, annual wages growth to June 2018 would have been only 1.5 per cent (0.4 per cent lower than the 1.9 per cent reached).³⁵ In the most recent December 2018 wage inflation figures, the minimum wage increase elevated retail trade as the industry making the greatest contribution to the growth of the LCI. However, despite the strong positive influence of the first minimum wage increase and care worker settlement over the last year, New Zealand wages growth has been sluggish overall, failing to exceed CPI in recent quarters (CPI grew 1.9 per cent in the year ending December 2018). This shows the need for more proactive wage-boosting measures – such as those pursued through Fair Pay Agreements and collective bargaining reform, as well as wage increases through future pay equity settlements and minimum wage increases.

The commitments to significant annual increases to the minimum wage through 2021 will put the lowest-paid workers in New Zealand in significantly better standing relative to average workers, compared to the lowest-paid in Australia. Figure 2 presents the ratio of minimum to median full-time worker earnings from 2007–17 for the two countries. Since 2007, minimum wages relative to median worker earnings (a benchmark for relative poverty) have been higher in New Zealand than Australia, increasing from 51 per cent in 2001 to 61 per cent in 2016 (a 10-percentage point increase). Over the same period of time, in contrast, Australia's minimum wage as a percentage of median earnings *declined* by 4-percentage points from 59 per cent in 2001, to a low of only 52 per cent in 2008, recovering partly to 55 per cent by 2017. If median full-time earnings in New Zealand continue to rise at their recent 5-year average pace of 2.7 per cent per year, then the ratio of minimum wage to median earnings achieved by the scheduled minimum wage increases will rise above 68 per cent by 2021.

³⁵ See Stats NZ (2018). Minimum wage pushes up private sector pay rates.

Figure 2. Minimum wage as a percentage of wages of median full-time worker



Data: OECD Employment and Labour Market Statistics (2019).

New Zealand and Australia were the first countries in the world to enact minimum wage laws; they have a shared egalitarian labour market tradition, but one that was badly eroded in both countries under policies of wage restraint since the 1980s. Strong commitments to annual increases in the minimum wage, well above the pace of normal wage inflation, are a welcome signal by the new government in New Zealand that it intends to actively use its policy levers to rebuild a system of wage determination more consistent with inclusive growth and high living standards for workers. It is interesting to note that at present, Australian unions (through the ACTU) are campaigning to lift the minimum wage to 60 per cent of the median wage³⁶ – exactly where New Zealand’s was in 2017. If anything, the New Zealand experience shows that an even more ambitious approach to raising the minimum wage is possible.

³⁶ See ACTU (2017).

VI. The Campaign for a Living Wage

The living wage is a wage that represents the amount of income required to secure a dual-earner household a basic, but decent lifestyle. As the redistributive institutions that once ensured workers received an adequate income have been weakened, the quality and remuneration of work has eroded, leading to a significant rise in working poverty and inequality. In response to the failure of modern industrial relations systems to move with the times, demands for a “living wage” have arisen across the world. In many cases these campaigns have forged new broad-based civil society alliances to advocate for a wage benchmark that supports workers to survive and participate freely in their society. The living wage was recently propelled into Australian national debate when the Australian Labor Party announced it would reinstate living wage principles in minimum wage setting if successful in the upcoming federal election.

The living wage movement aims to tie the calculation of minimum wages to the explicit costs of managing a household, raising children, and participating in community life. The calculations are based on specific defined bundles of goods, services and activities undertaken by a representative household. Those costs are then “backed out” to calculate the minimum required wages that would have to be earned in the household to pay for those expenses, net of taxes and transfers from government. The goal is to use the living wage as a political and pedagogical vehicle, to lift minimum wages so that they can cover the real costs of basic modern life, and prevent employed workers from living in poverty.³⁷

New Zealand’s Living Wage Movement was initiated in 2012 by the Service and Food Workers Union (now amalgamated as part of the new union, E Tū), and now stands as an alliance of 70 member-groups from unions, community organisations and faith-based groups. The campaign emerged from decades of economic changes observed across New Zealand’s labour market, including the growth of low-wage service sectors such as childcare, cleaning and retail, and a corresponding rise in insecure work. While

³⁷ In Australia, the national minimum wage is reviewed and set each year by the Fair Work Commission. Increases are set by the objectives enshrined in the FW Act (Section 284) which refer to a wide range of factors including business competitiveness, employment growth, inflation, living standards, and the needs of low-paid workers. There is no specific reference to poverty or the adequacy of the goods and services that could be purchased by a minimum wage worker.

recent commitments from the government to increase the minimum wage to \$20 by 2021 are a significant step in the right direction, the minimum wage still lags behind estimates of a living wage rate.

First calculated in 2013 to estimate the weekly costs of a basic and decent living standard for two adults (one working full time and the other part time) and two children after tax and transfer payments, the New Zealand living wage was then estimated at \$18.40.³⁸ Subsequent increases were set to match the annual growth in the wage price index. In 2018, however, a full review was conducted into the costs of goods and services comprising the living wage (including food and rent, energy, health, communication, education and leisure). The living wage is now estimated at \$20.55; this is \$4.05 or \$162 per week above the latest minimum wage.³⁹ By 2021, the minimum wage will be \$20: just 55 cents below the 2018 living wage estimate. However, assuming that the living wage continues to increase at the same rate as it did between its calculations in 2013 and 2018 (about 2 per cent per year), the living wage will be about \$22 by 2021. That will be about 10 per cent above the minimum wage by then, indicating the need for continuing living wage campaigning. Presently, around one-third of wage and salary earners (approximately 680,000 workers) are estimated to be earning below the 2018 living wage benchmark.⁴⁰ 40 per cent of children living in poverty have at least one parent in full-time work or self-employed (Ministry of Social Development 2018); this confirms that the failure of employers to pay a living wage is directly contributing to the incidence of poverty among children.

Advocating across communities, councils, workplaces, churches, unions and government, the Living Wage Movement has helped to propagate the concept of a living wage, and put pressure on employers to recognise and respect the living wage as an ethical (if not yet legal) minimum standard. In so doing, the movement has contributed to better wage outcomes for thousands of workers. An accreditation system has encouraged employers to become accredited Living Wage Employers; around 100 employers are presently accredited, including three city councils that have committed to extending a living wage to all employees, and two other councils whose accreditation is pending.⁴¹ Importantly, the new government has committed to

³⁸ Calculation of the living wage is made difficult by the interaction between labour market and non-market policies that influence many low-wage earners' incomes, such as transfers and taxes, and the provision of public services. See King (2016) for a discussion on the method for calculating New Zealand's minimum wage in 2013.

³⁹ For full report outlining the method and outcomes of the 2018 living wage review, see Waldegrave, King and Urbanova (2018).

⁴⁰ Media Release for Living Wage Movement Aotearoa. 2018.

⁴¹ For more recent developments in the campaign, see Living Wage Movement Aotearoa at <https://www.livingwage.org.nz/>.

ensuring all core public service employees are paid a living wage (including full-time, part-time and casual employees), impacting around 2,000 workers in welfare, clerical and administration, contact centre and assistant customs roles. An advisory group is also being established between government, unions, and the Living Wage Movement to oversee implementation of the living wage across the economy – including its extension to contractors in the public sector over the next two years, where there is a high prevalence of very low wages.

The threats to wages and the quality of employment evident in New Zealand clearly cannot be single-handedly addressed through the present industrial relations framework – even with the positive changes that were discussed above. For this reason, the living wage campaign focuses on building and mobilising broad community alliances, drawing in other players and stakeholders into a broad push for living wages. Unions still play a key role: existing union infrastructure can help to “seal the deal,” formalising publicly mandated living wage demands into collective agreements. This structure allows unions to rebuild their social profile and legitimacy, whilst confirming and expanding collective bargaining as the crucial norm-setting mechanism in low-waged jobs. New government measures introduced in the Employment Relations Amendment Bill last year will lift some restrictions imposed by previous legislation on the rights of unions to organise in workplaces; nevertheless, low collective agreement coverage means strong minimum wage protections will remain an important foundation for wage increases, and the demand for living wages helps to lift the bar even higher. In New Zealand, where low unionisation, low wages, low collective agreement coverage, and widespread poverty all stack the odds against inclusive growth and greater equality, the Living Wage Movement demonstrates that a demand for living wages can indeed be rejuvenated in current economic conditions, and provide an opportunity for unions to rebuild their broader role and standing in society. Australian labour advocates should be encouraged by this experience.

VII. Ten Days Paid Domestic Violence Leave

Adding to New Zealand’s list of progressive labour law developments, legislation extending 10 days paid leave to workers experiencing domestic violence (DV) was passed in July 2018, making New Zealand one of the first in the world to legislate paid DV leave in employment law at a national level.⁴² Green MP Jan Logie’s Domestic Violence-Victims’ Protection Bill supports workers experiencing DV to remain in paid employment by extending paid leave, supplemented by other supports like flexible work conditions and protection against adverse treatment (via amendments to the Human Rights Act). Providing DV leave in workplaces is thus another aspect of the New Zealand government’s wider reform program to shift employment relations toward higher-trust, productive, and supportive workplaces that recognise the importance of employee wellbeing and work-life balance.

Extending employment supports for DV is a significant step on the road to building an adequate policy response in a country reported to have the highest rate of family violence in the developed world.⁴³ The entitlement also allows for the fast-tracking of flexible work arrangements such as changing work location, email address, and removing personal identifiers from company websites. Further funding of NZ\$80 million was announced in the Government’s May 2018 Budget for frontline DV services, bolstering the new supports being introduced in employment law.

During the Bill’s consideration, opposition was mounted from the conservative National party on the basis that costs would be too onerous for small and medium-sized enterprises. But rather than representing additional costs to employers, the government and women’s advocates argued that the status quo was hardly “free”: substantial costs of DV at the workplace level are already incurred by employers through absenteeism, productivity loss, sick pay, and recruitment and training costs for new staff (in the event that a victim’s employment is terminated). An influential New Zealand-based study (Kahui et al. 2014) for the Public Service Association (PSA) found productivity losses and increased staffing expenses caused by DV cost employers at least NZ\$368 million in the year to June 2014. Over 10 years, the authors projected

⁴² 10 days paid DV leave also exists in the Philippines, but it is not known how widely the provisions are used or how they are enforced. Paid DV leave also exists at a provincial level in Canada, in Manitoba and Ontario.

⁴³ See Adams (2017).

that, without the introduction of protective measures, the cost of inaction to employers would thus total at least NZ\$3.7 billion dollars. While continued employment is crucial for DV victims to be able to escape and resolve their violent situations, the PSA report claimed paid DV employment protection in the workplace would also lead to increased productivity and reduced turnover. Other research suggests the additional payroll costs to employers of implementing a paid leave entitlement are minuscule.⁴⁴

Domestic violence is a pervasive problem in Australia, and ABS figures show around two-thirds of the 440,000 women who reported experiencing violence in the last 12 months in 2016, are in the workforce.⁴⁵ Despite this, Australian labour law is yet to extend paid DV leave to employees. DV leave clauses exist in many enterprise agreements, but many of those punitively require other leave balances to be exhausted in order to access it. In March 2018, the Fair Work Commission rejected the ACTU's proposal to extend 10 days paid DV leave to all workers through inclusion in the Modern Awards, and instead opted for *five days unpaid* leave in the National Employment Standards (NES)⁴⁶. The FWC accepted the argument that domestic and family violence undermined workforce participation, and that a lack of access to leave had consequences for workers' safety and financial and job security. However, the Commission was nevertheless convinced by employers' arguments that a paid leave entitlement would impose burdensome costs.

While the facts of the ACTU argument accepted by the FWC were a step in the right direction, the unpaid status of the entitlement does not address the financial penalty imposed on those who must forgo income in order to leave unsafe living conditions. As well as insufficient financial support, five days is also an insufficient period of time for workers who may need to pack and relocate, find new schooling or childcare, receive medical attention, and attend police and court appointments. Despite unsuccessful attempts to universalise DV leave, the entitlement now exists for around 1.6 million Australian workers through enterprise agreements (mostly in the State public sector) and unilateral company policies.⁴⁷ But low union density (particularly in the private sector) and uneven bargaining strength across workplaces and industries means access to DV leave is not available for most workers, particularly the lowest paid in Award-reliant industries. The Australian Labor Party has committed to legislating for the New

⁴⁴ See, for example, Stanford (2016) in the Australian context.

⁴⁵ ABS 2016. *Personal Safety, Australia* (Cat. no. 4906.0). Table 6.1.

⁴⁶ 4 yearly review of modern awards — Family and Domestic Violence; [2018] FWCFB 1691.

⁴⁷ The most extensive of these wins include NSW public sector employees (including teachers, nurses and police) who obtained 10 days paid domestic leave in 2018 (starting from 1 January 2019). This extends the NZ-equivalent DV entitlement to around 300,000 workers.

Zealand-equivalent 10 days paid DV leave in the NES, should it be elected in the May 2019 federal election. This will universalise paid DV leave for all employees; however, it is not clear how these efforts may extend to non-employee workers (including contractors and gig workers).

Implementation of any new entitlement may have important lessons to learn from the New Zealand experience, too. New Zealand's unions are playing a key role in communicating the law change to workers at the workplace level, and shaping the day-to-day operation of the entitlement – including by assisting employers to establish new procedures for employees applying for leave, and designing appropriate supports for their return to work. This worker-led, “ground-up” implementation approach is best because it allows new policy and procedures to be shaped by those affected, and for monitoring the effectiveness of new policies and recommending changes through surveys of membership. However, achieving this outcome in Australia will require the lifting of punitive restrictions on union activity in the workplace (a process which has begun in New Zealand with the reinstatement of some union access rights in the recently passed Employment Relations Amendment Bill last year).

Conclusion

New Zealand faces many challenges in the aftermath of an aggressive neoliberal policy agenda that hollowed out its regulatory institutions and public programs – institutions once internationally revered for securing high wages and a decent quality of life for most workers. Now trapped within a low-wage and low productivity cycle, New Zealand’s economy has few high-value sectors and is resource-reliant, and its largely dismantled collective bargaining and wages system further entrenches low-wage work. Despite these challenges, the new government is pursuing an ambitious program of labour policy reform, using several initiatives simultaneously to rebuild a more inclusive and equal society. The measures described in this report will make a significant difference to employment relations and wages in that country. But the process being pursued by the New Zealand government to develop and implement these policies is also important in its own right: especially the consistent way in which unions are being engaged in tripartite arrangements to achieve, implement and communicate the changes. This holds real potential for New Zealand’s union movement to rebuild their role and influence in employment relations, which has been weakened since the 1980s by some of the most aggressive anti-union measures in the OECD.

Labour advocates are embracing this period of reform to rebuild an industrial relations regulatory framework on a more democratic, inclusive basis – and with collective bargaining and collective representation playing a crucial role at all stages (including implementation of new provisions like pay equity and DV leave). That could be a victory even more important than any particular policy. The lessons for Australia from New Zealand’s reforms are both important and timely, as we head into our own federal election with work and wages at the front of national debate, and potentially begin a new chapter in labour policy reform.

Appendix 1: Summary of Current and Future Labour Policy Reforms in New Zealand

Table 3. Summary Table of Labour Policy Reforms Contained in Report and Selected Future Reforms

<i>Reform</i>	<i>Overview</i>	<i>Progress</i>
Labour policy initiatives covered in report		
Employment Relations Amendment Act 2018	Suite of amendments bringing labour laws back to pre-National changes in areas of employee and union rights & collective bargaining settings	Bill passed December 2018
Pay Equity settlements and amendments tabled to the Equal Pay Act 1972	Two large pay equity settlements in 2017 covering over 60,000 community care and support workers and social workers at Oranga Tamariki. Amendments planned to Act to give women in historically undervalued female-dominated occupations access to pay equity claims through bargaining mechanism, and courts in event claims do not proceed	Legislation reflecting new principles for equal pay claims introduced to Parliament October 2018 (in process). Efforts underway by unions to build pay equity claims across administrative and clerical roles, social and support workers, and Allied health workers in the public healthcare system (covering over 150 occupations)
Employment Relations (Triangular Relationships) Amendment Bill 2018	Employees in triangular employment automatically bound by any collective agreement in the workplace of their secondary employer. Employees will be able	First Bill reading 21st March 2018. Referred to Select Committee and report due in 2019

	to raise a personal grievance against their secondary employer	
Domestic Violence—Victims’ Protection Bill 2018	Bill introducing 10 days paid DV leave, rights to flexible work conditions to improve the safety of workers experiencing DV, and protection against adverse treatment through amendments to the Human Rights Act 1993.	Bill passed and into effect April 2019
Fair Pay Agreements	Allows employers and workers to create FPAs to set minimum conditions, such as wages, allowances, weekend and night rates, hours of work and leave arrangements for workers in an industry, based on industry standards	Tripartite working group to make recommendations to Minister for Workplace Relations and Safety in December 2018, legislative changes tabled for 2019.
Increase in the minimum wage	Government commits to increasing the minimum wage every to \$20 per hour by April 2021	First rise of 75c to \$16.50 per hour delivered in April 2018.
The Living Wage campaign	Unions campaign active since 2012 mostly across public sector to extend a living wage to low-paid workers, currently calculated at \$20.20 per hour (\$4.45 more than the minimum wage). NOTE: While the PSA is the largest union in the government sector, E Tu, NUPE, and Taxpro, all have members in the public sector	Recent win of up to 40% pay increases for hospital workers, such as in cleaning and security (E Tu).
Introduce the Living Wage for all core public service employment	Government has agreed to extend living wage pay to all of its directly employed employees. Includes working with employers in ongoing service contracts with core public service to ensure they are Living	Marked for Tranche 2, but progress already underway by public service unions

	Wage employers	
Other Initiatives marked for Tranche 2 reforms—2019		
Repeal of amendments to the “Hobbit Law”	Restoring collective bargaining rights to film industry workers to bargain on an occupational level (e.g. Technicians, Actors). Workers can still remain contractors.	Film industry working group reported to government October 2018. Government considering recommendations, with legislative changes tabled for 2019.
Increase numbers of Labour Inspectors	Lift numbers of and resourcing for Labour Inspectors to enforce employment law and prosecute breaches	TBC
Introduce rights for “dependent contractors”	Pursue a number of measures to more closely align dependent contractors with employees (including workers on gig platforms)	TBC
Reform the Productivity Commission (PC)	Reform the PC to focus on improving wage growth and development of high-performance high-engagement employment relations	TBC

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