

Aotearoa/New Zealand: Conservative govt scraps Fair Pay Agreements, derails sectoral bargaining

Sunday 14 January 2024, by [TILLMAN Clive](#) (Date first published: 8 January 2024).

Aotearoa/New Zealand's Fair Pay Agreements Act was repealed by the newly-elected conservative National Party government on December 20.

The bill to repeal the *FPA* — which was introduced to appease business interests — was rushed through parliament without consultation, implementing the new government's election pledge to scrap Fair Pay Agreements by Christmas.

The repeal has immediate effect and no applications can be made for new FPAs to be registered with the Ministry of Business, Innovation and Employment (MBIE). While no finalised FPAs have been registered to date, parties that commenced FPA bargaining before the repeal were instructed to immediately cease all bargaining activity.

The union movement has expressed fierce opposition to the government's actions. NZ Council of Trade Unions president Richard Wagstaff [told the media](#): "The NZCTU was categorically not consulted on repealing Fair Pay Agreements by the new Minister... It is very concerning that the Minister of Workplace Relations doesn't understand what consultation is in practice, considering the importance of this concept for the portfolio."

Mat Danaher from E tū Union [expressed similar concerns](#), saying: "The new government has deliberately ignored the advice of officials and is ramming this change through under urgency, because of an ideological opposition to the idea of workers having a say over terms and conditions ... This isn't just a policy change; it's a step back for worker rights and fair pay in New Zealand. It's a pivotal moment for our country's workforce, and we stand in solidarity with those whose voices are being silenced by this repeal,"

The introduction of union-led sectoral bargaining

The *Fair Pay Agreement Act* was passed under the former Labour government in October 2022, after more than six years of consultation and dialogue between government, unions and industry representatives. The legislation aimed to introduce a sectoral bargaining platform for unions and employer organisations to bargain for industry standards and pay floors. The FPA system was designed to assist workers in low-paying and highly fragmented sectors such as childcare, cleaning, security and hospitality industries to access better pay and conditions.

The end goal was to harness employees' voices to set industry standards for issues such as minimum rates of pay, working conditions and health and safety, and to prevent employers from competing to drive down wages and conditions.

FPA's were also designed to entrench the role of unions as key bargaining parties. A union was able to commence bargaining once they were able to demonstrate support from at least 10% or 1000 workers in an industry or sector.

Alternatively, a "public interest test" was also available to a union unable to satisfy the representation threshold. To satisfy the test, a union had to prove that the workers in question received low pay *and* had little bargaining power, *or* lacked pay progression in their employment, *or* were not adequately paid when taking into consideration working long hours and/or contractual uncertainty.

Once bargaining for an FPA commenced, unions and employer organisations would meet to negotiate industry standards. The legislation stipulated that FPA's must include mandatory terms such as base wage rates, ordinary hours, overtime and penalty rates. Other terms — which were mandatory to discuss but didn't have to be agreed upon — included redundancies, leave, health and safety, and flexible work.

If bargaining reached a deadlock, the parties were able to seek assistance from the Employment Relations Authority via mediation. If mediation failed to resolve an impasse, the Authority could settle FPA terms via arbitration.

Attempt to wind back labour deregulation

The FPA system was an attempt to wind back decades of neoliberal labour reforms that began under Labour in the 1980s with the move away from awards and towards enterprise-level employment regulation.

The high watermark for neoliberal deregulation came in 1991 when Prime Minister Jim Bolger's National government passed the *Employment Contracts Act (ECA)*. This highly controversial legislation completely abolished the award system and reversed almost a century of legislative development. It placed common law contracts at centre stage and reconstructed industrial relations as one between individual employee and employer. All legislative references to unions were removed. Unions were simply referred to as one of several possible "bargaining agents".

The underlying principles behind the *ECA* were individualism, freedom of contract and market flexibility. These ideas were directly derived from the neoclassical economic theories of Milton Friedman and the Chicago School of Economics.

The *ECA* resulted in a widespread collapse of collective bargaining. Private sector collective agreement coverage declined from 48% in 1990 to 21% in 1995. Union membership also took a heavy hit — within the first year of the Act unions lost approximately 50% of their membership base. Union density fell from 42% in 1991 to only 17% in 2000.

By the early-2000s it became apparent that neoliberal policies were not the golden key to economic prosperity. This was most evident in NZ, where more than a decade of neoliberal labour market reforms had failed to result in significant economic productivity gains.

In an attempt to reverse some of the more excessively neoliberal aspects of the Act, the 5th Labour government under Helen Clark passed the *Employment Relations Act 2000 (ERA)*.

Labour's *ERA* remains in place to this day. It is an improvement over the *ECA* to the extent that it contains greater rights for unions and obligations for employers to bargain in good faith. However, it has failed to reinvigorate collective bargaining.

The fundamental problem with the existing legislation is that it preserves the individualistic and voluntarist core of the *ECA*. Enterprise-level bargaining and individual contracts remain the main source of employment regulation. Unions also do not have exclusive bargaining rights over a workplace because employees have the individual “choice” to opt out of the collective bargaining process.

Over the past 20 years, NZ has been trapped in a low-wage and low-productivity downward spiral. Union density and collective bargaining coverage have continued to decline, even under the slightly more favourable conditions of the *ERA*. Collective bargaining coverage sits at 15.9% (far below the OECD average of 33%).

Sectoral based bargaining leads to greater collective coverage

There are many reasons why sectoral bargaining leads to higher collective bargaining coverage. Firstly, sectoral bargaining provides the benefits of economies of scale and allows unions to bargain for large numbers of employees without exhausting resources. Second, it provides protection against hostile employers who use “contracting-out” to avoid collective bargaining altogether. Third, it protects against a race to the bottom, whereby enterprises that maintain collectively bargained wages and conditions are at a competitive disadvantage to those that do not.

There is a strong correlation between the level that bargaining occurs and the level of collective bargaining coverage. Bargaining coverage is highest in countries that have broad-based sectoral bargaining and mechanisms to extend agreement coverage to wider sections of the workforce.

In contrast to the low collective bargaining coverage that exists under single enterprise bargaining models, such as in NZ and Australia, coverage ranges from 49% in Switzerland to 98% in Austria and France. The average coverage rate in countries with sectoral bargaining sits at 76.8%.

Clive Tillman

[Click here](#) to subscribe to ESSF newsletters in English and or French.

P.S.

GreenLeft

<https://www.greenleft.org.au/content/aotearoa-nz-conservative-govt-scraps-fair-pay-agreements-derails-sectoral-bargaining>