

## Work and Wages

### Our vision

A founding value of the Labour Party is the protection of New Zealanders at work, including the right to a fair day's pay for a fair day's work, the right to join unions and bargain collectively, the right to have a voice at work and the right to be protected from unfair or unsafe treatment at work.

Labour believes that all New Zealand workers are entitled to a living wage and fair and safe working conditions, and our workers should not be forced to leave for Australia to achieve them. Fairness at work does not mean business is harder to do – in fact good work and decent wages support New Zealand business to lift productivity, to perform well and to grow.

While Labour in government made important changes to the employment relations framework, we believe that the current bargaining and minimum code laws need to be further strengthened to keep up with the realities of the 21<sup>st</sup> century and to deliver better results for New Zealanders.

The reforms to the wider New Zealand economy over the last 25 years have seen income at the top end grow by more than 40% in real terms, but workers on low and middle incomes have struggled.

In particular, since the National Party abolished industry collective agreements in 1991 average wage rates have lagged well behind the increases in productivity and low income workers have fared the worst. More of the same policy will deliver more of the same results: wages lagging, productivity falling behind, and people leaving for opportunities overseas. It is time for a change of approach.

Labour is committed to building a modern, fair and flexible employment relations system based on a skilled workforce, secure employment, decent wages and increased productivity as part of increased prosperity for all New Zealanders.

## Part 1: Better Wages and Higher Productivity

Labour's wages policy will help lift wages in New Zealand across the board, to help stem the drift to Australia of our workforce.

We will work with employers, unions and sector groups to fundamentally change New Zealand's economy from a reliance on low wages and longer hours to an investment in more productive workplaces where high trust, high skill and high wages are the success indicators of New Zealand business and jobs.

A critical first step, and one which will help the lowest-paid workers directly, is an increase to the minimum wage, which Labour has long-signalled.

**Labour will increase the minimum wage to \$15 an hour in our first year in government.**

Decent pay will not be delivered for all workers through improvements to the minimum wage. The experience of the past twenty years shows that the labour market arrangements New Zealand has led to lower pay for New Zealand workers. That lower pay means New Zealand business faces fewer incentives to lift productivity and lift investment in workplace, or in workers' skills and education.

It is a vicious cycle: low wages and low productivity, with New Zealand families bearing the consequences. A critical advantage that Australian families – and Australian businesses - have over their New Zealand cousins is a fairer labour market. Stronger rights at work mean decent pay for Australian workers and higher productivity for Australia. The gap continues to widen.

**Labour is committed to closing the income gap and improving our productivity track record. Our plan will tackle this long-standing problem with a new labour law framework for New Zealand.**

## Industry Standard Agreements: driving better wages

### Introduction

Since New Zealand's employment relations system was deregulated in the 1980s and early 1990s, wages have grown at a far slower rate than that of the economy as a whole. The share of the economic pie going to workers has decreased over the past three decades. The weakening of workers' bargaining power following the Employment Contracts Act 1991 has been a major factor, along with the growing capital intensity of the economy, according to CTU economist Bill Rosenberg.

From 1992 to 2009 the average real output per worker rose on average by 2% a year, but real wages rose at less than half that amount.<sup>1</sup> Australia, which has retained a stronger collective bargaining environment, has seen a far smaller decline in workers' share of the economic pie as shown by the graph below.



Source: Bill Rosenberg, *CTU Monthly Economic Bulletin* No. 125, June 2011

Economic growth will not be successful in closing the wage gap with Australia unless we also have an employment relations environment that allows workers to gain a greater share of the benefits of that growth.

Slow wage growth has been most evident in a number of low-skills and largely non-unionised industries. These industries not only have wage rates that are well below the rest of the workforce, but their wages are also rising at a lower rate. This has led to increasing 'wage growth dispersal', so that those with the highest wages are 'pulling away' from the rest at the top end, with higher rates of wage growth, while those with lowest wages are falling ever further behind the median.

<sup>1</sup> S Guthrie and A Gawrith, 'Subsidising incomes stunts growth', *NZ Herald*, 26/04/2011

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This growing gap between wage earners and employers and investors (the main beneficiaries of the drop in labour's share of income), and in particular the growing wage gap between different industries, not only makes life a struggle for low wage workers but also destabilises the wider economy.

As the wage gap grows, those in the lower and middle parts of the income distribution are encouraged to borrow more to keep up with society's standard of living expectations. This excessive borrowing is unsustainable and eventually results in defaults which mean investors lose money, lending constricts and the economy shrinks.

'Third way' social democratic governments sought to deal with this issue of 'wage growth dispersal', not through wages policy, but in part through redistributive government policies (e.g. 'Working for Families'). Such policies delivered real income gains to families who were eligible for them, but there is now a growing recognition that there are political and practical limits to what can be achieved through after-the-fact rebalancing of market incomes in this way. It risks becoming a never-ending treadmill, which fails to deal with the underlying causes of inequality.

Efforts to increase union density and bargaining power under the Employment Relations Act 2000 have had a limited impact. Union density is very low with just 9% of the private sector workforce in a collective agreement and several industries with no union representation. There are only three multi-employer collective agreements (MECAs) in the private sector and it has proved almost impossible for unions, particularly in lower paid industries such as Aged Care and Retail, to set standards across industries in this way.

Labour's new employment relations framework based around 'Industry Standard Agreements' takes a different approach to improving worker bargaining power and pay. Rather than solely focusing on increasing union power, it seeks to spread the benefits of collective bargaining across the larger workforce, sharing the gains with those who are not union members.

At present, workers in large sectors of our economy have very little say in their terms and conditions, which are in most cases set unilaterally by their employer. One option to address this would have been to further regulate minimum pay and conditions through the Minimum Wage Act and to introduce other minimum code legislation.

While Labour will continue to set minimum standards by law to protect the most vulnerable, we believe that employers and employees, through their unions, are best suited to sitting down and negotiating the wages and conditions in their workplaces and industries.

An Industry Standard Agreement will be a collective agreement representing the employment 'standards' in the particular industry, agreed in the first instance between unions and employer organisations in the defined industry. Through the Industry Standard Agreement, these standards would be 'extended' to all workers in the industry, providing a set of minimum pay and conditions, based on genuine negotiations in other parts of the industry.

**Labour will amend the Employment Relations Act 2000 to implement the Industry Standard Agreements framework set out in this policy.**

We will aim to do so within one year of taking office.



Labour's plan will facilitate industry engagement, providing an incentive to work together on skills, health and safety, productivity and industry strategy as well as the establishment of minimum employment conditions.

There are already many successful industries in the NZ productive sector, which have actively engaged with workers through their unions and as a result, share a lot in common in working toward the best outcome for the business and its shareholders. The Plastics and Metal industries are just one example. Labour wants to see the potential of New Zealand workers and employers unleashed. Past strategies, such as that of the Employment Contracts Act, have seen New Zealand fall well behind other comparable countries not only in wages, but also productivity, skills development, job creation and innovation.

## What is an Industry Standard Agreement?

An Industry Standard Agreement would be a new and different form of agreement under the Employment Relations Act. It would join the existing individual, collective and multi-employer collective agreements that the Act already provides for.

Industry Standard Agreements will be built from the norms already developed in an industry negotiated or determined by a **Workplace Commission**, as set out in detail below. They will set out standards that the industry must at least meet.

The provisions of the Agreements will extend to all workers covered by them (i.e. within the industry the Agreement covers). The norms they embody will become minimum standards. Employers and workers will be free to negotiate terms and conditions that exceed those set out in Industry Standard Agreements, but they will not be able to agree to terms that are less than those in the applicable Industry Standard Agreement.

With the Industry Standard Agreement framework in place, the norms in an industry will become a floor through which nobody's terms and conditions can fall. The gains that workers make through collective bargaining will be shared with all those covered by these new Agreements.

## How Industry Standard Agreements work

This section sets out at a high level the process by which an Industry Standard Agreement will be developed and maintained. It is worth noting that at various stages it is possible that unions and employers may be able to proceed by voluntary agreement without the need for any involvement of the Workplace Commission. This section focuses on what happens if voluntary agreement is not reached.

### ***Beginning the Process***

The process of developing an Industry Standard Agreement will usually be initiated by a union or group of unions who have collective agreements in an industry (employers could also initiate it). This will be done by application to a Workplace Commission, which will be established for the purpose of dealing with Industry Standard Agreements.

Labour will establish the Workplace Commission as part of the Employment Relations Authority.

This application would be in respect of an 'industry' as defined by the applicants, giving evidence of similar functions, processes and products/services, as appropriate. This approach is similar to that taken with Industry Training, where the scope of an Industry Training Organisation (ITO) is proposed by the organisation applying for ITO status rather than using some pre-existing definition developed for a different purpose.

The Workplace Commission will consider whether or not this 'industry' meets the threshold for having an Industry Standard Agreement.

This threshold will relate to the level of collective bargaining already in the industry. This is because the purpose of the policy is to extend prevailing collectively-bargained norms to the entirety of the industry. It is not intended to create or impose norms on industries where none currently exist. The threshold will in effect be set in practice through the on-going deliberations of the Workplace Commission (guided by the legislative criteria set for them).

Another dimension of the Workplace Commission's decision at this stage will be whether to accept the scope of the 'industry' as proposed by the applicants.

Employers covered by this 'industry' description will have the opportunity to make a case as to why the threshold has not been met and/or whether the scope of the 'industry' should be defined differently.

### ***How the standards would be determined***

If the Workplace Commission agrees that the industry met the threshold for having an Industry Standard Agreement, then negotiation will commence. Unions and employer bodies could agree to a set of standards for implementation, but in cases where agreement is not reached, the Workplace Commission will determine what the standards are that will be put in place by the Industry Standard Agreement.

Where there is no voluntary agreement, the Workplace Commission will make decisions on which standards to include by looking at the collective agreements already in force within the industry, and at which ones are most widely shared and could properly be seen to constitute an industry norm. Depending on the level of collective bargaining in the industry, these standards may largely consist of the more basic standards of existing collective agreements.

Examples of matters that might become standards include rates of pay, holiday entitlements, overtime payments, or union rights.

The Workplace Commission will hear submissions from unions and employers, arguing their cases as to whether or not particular standards could be reasonably included in the Industry Standard Agreement, and if so, at what level.

Where unions are the applicants, they will be expected to demonstrate to the Workplace Commission support for the standards not only among those currently on collective agreements (and therefore unlikely to be directly affected), but also among the (largely un-unionised) workforce in the industry not currently on collective agreements. Visits to highlight the advantages of the proposed standards and to collect evidence of support would be a legitimate reason for unions' access to non-unionised worksites as provided for in the Employment Relations Act.

The consideration of an Industry Standard Agreement proposal is essentially a quasi-judicial process, rather than an industrial negotiation. As such, it will not be permissible for employees to strike in support of an Industry Standard Agreement.

The standards in an Industry Standard Agreement may relate to wage rates as well as minimum conditions. These might provide that for particular occupations or roles the rate of pay could be no less than a particular amount.

In most cases, it is likely that Industry Standard Agreements would be relatively short with less than a dozen standards in them. They would not be anywhere near as detailed or complex as many collective agreements need to be.

For an industry with a number of quite diverse occupations working within it, an Industry Standard Agreement could set out a number of standards for some occupations, but few if any for others, depending on their particular circumstances.

### ***What happens when an Industry Standard Agreement is determined by the Workplace Commission***

Once determined, the Industry Standard Agreement will set minimum standards for any Individual Agreements in any workplace within the defined industry and they will be “extended” to all employers and employees in that industry.

For the first 60 days after the Industry Standard Agreement has been put in place, all employees in all workplaces will be provided with easy access to information and advice about the relevant unions so they are able to choose to join a union. They have the right to join the union at any time.

The Industry Standard Agreement forms the basis of the terms and conditions of workers in an industry, but workers may have additional terms and conditions in an Individual Agreement, provided they are not less than the standards in the Industry Standard Agreement.

However, an employer or group of workers may elect to negotiate a collective agreement instead which has alternative standards. Workers covered by a Collective Agreement could in principle have different conditions than the Industry Standard Agreement provides for (the amendments to the Employment Relations Act will not prohibit this). A collective agreement may include a package of conditions some of which may be much better than some standards and some less than other standards in the Industry Standard Agreement.

This acknowledges the diverse workplace circumstances across each industry and allows flexibility for employers and unions to meet particular needs in collective agreements. Having improved industry standards provides unions with a better position from which to undertake collective agreement negotiations and it would be unlikely that any union would agree to worse terms and conditions overall.

### ***Revising the Industry Standard Agreement***

The Industry Standard Agreement will stay in force until either employers or union(s) seek to initiate a change.

The main reason that unions would wish to initiate a change would be once a new round of collective agreements had been negotiated that lifted the prevailing wages, and perhaps other conditions, in the industry.



This would, if some employers disagreed with this amendment, set off a new round of consideration by, and testimony to, the Workplace Commission.

Unions would seek to show that the changes had been broadly implemented within Collective Agreements and should be extended to the industry as a whole via a revision to the Industry Standard Agreement.

Employers could challenge unions' evidence and/or seek to show that the conditions in the Collective Agreement parts of the industry that gave rise to those changes did not apply to the non-Collective Agreement parts of the industry.

It is likely that the process for revising an Industry Standard Agreement will take less time and be less resource-intensive than that of establishing one in the first place.

## **Transition to the Industry Standard Agreement framework**

The implementation of this new framework presents the most far-reaching change to New Zealand's employment laws since the Employment Relations Act was passed in 2000. It is important that the transition to the new system is managed properly. To achieve this, Labour will implement a supported transition period that gives both unions and employers time to understand the process and prepare resources.

Employers will need to re-think their current industry representation organisations and where no such organisations exist they will need to consider establishing them in order to have appropriate bodies to represent employers in Industry Standard Agreement negotiations.

Unions will need to assess collective agreements across a range of industries to determine likely standards, consider threshold requirements, determine which unions should be part of the process in each industry where Industry Standard Agreements are to be sought, and to identify likely employer parties to negotiations.

In order to allow this pre-negotiation ground work to take place:

**Labour will provide for a six month transition period to occur after the Employment Relations Act amendments gain Royal Assent in which no Industry Standard Agreement applications may be made.**

During this period the government will provide resources to assist employers and unions in understanding the new law and building capability for negotiations.

This support will most likely be provided through additional resourcing to the Partnership Resource Centre, which provides advice and financial support to employers and unions on matters of employment relations.

During the transition period employer and union organisations will be encouraged to discuss potential standards, build up understanding of key issues and agree on the scope of the industry, so where possible common ground can be reached before negotiations begin.

Legislation is likely to take up to a year to pass through all stages and further time will be needed to establish the Workplace Commission, so the preparation period for employers and unions will run to around 18 months.



## What does Labour expect the policy to achieve?

### ***Wages and standards improved for a broader share of the workforce***

Wages and working standards of a far larger share of the workforce will be improved by union bargaining being extended across industries.

Collective agreements negotiated by unions typically have higher wages and better work standards than individual agreements in equivalent industry occupations. For example the average minimum wage in collective agreements is \$1.40 higher than the legal minimum wage.<sup>2</sup> The exact nature of the gains workers will receive from Industry Standard Agreements will vary from industry to industry due to differences in current negotiated norms, strength of union bargaining and capacity for improvement within the industry.

Other countries such as Germany which have pursued a similar style of wage and standard setting have seen far higher rates of wage growth and far more even wage growth across industries over the last two decades than New Zealand. The fairer rewards for workers have come with increased productivity, benefiting business as well.

### ***Union membership***

This policy offers unions the opportunity to raise their profile and to illustrate their relevance to a portion of the population unfamiliar with the potential benefits of union bargaining.

In the period leading up to the development of an industry standard agreement case, and after its implementation across industry, people covered who are not union members will be provided with information and advice about joining the relevant unions.

The simplicity of joining a union and a collective agreement coupled with the high likelihood that collective agreements will still contain higher wages and standards than Industry Standard Agreements means the advantages of joining a union are likely to become more prominent.

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<sup>2</sup> Department of Labour, 'Minimum Wage Review 2010', September 2010.

## ***Negotiation of collective agreements improved***

Spreading some of the norms negotiated in collective agreements across all employers in the industry will reduce barriers to the negotiation of collective agreements at the enterprise and multi-employer levels.

The fear of being under-cut by competitors with non-unionised workforces is a significant factor in employers being unwilling to agree to the sort of remuneration increases that unions are seeking for their members. Industry Standard Agreements which spread some of the norms negotiated in collective agreements across all employers in the industry remove this barrier and could lead to higher remuneration increases being agreed than would otherwise be the case.

Ultimately this helps prevent wages and labour costs becoming a point of difference between equally competing businesses and creating pressure to drive down the cost of labour.

## ***Better collaboration at industry level***

Labour's plan will facilitate industry engagement, providing an incentive to work together on skills, health and safety, productivity and industry strategy as well as the establishment of minimum employment conditions.

## Part 2: Decent work

Labour supports international labour standards and their effective implementation in New Zealand including the promotion by the International Labour Organization (ILO) of decent work for all and raising labour and social standards.

The outcome of good labour law should be that any worker, who wants to be represented at work, to have a voice through a union and to be able to influence the wages and conditions applying in their industry and at their workplace, should be supported to do so.

While Labour is committed to extending collective bargaining to more workers as the preferred means of setting wages and conditions, we will also continue to build on a floor of safety net rights for all workers.

Labour will repeal the National Government's unfair laws where workers can be fired without cause in their first 90 days of employment, and the restrictions on the access for workers to their unions in the workplace.

Labour will restore reinstatement as the primary remedy when an employee has been unjustifiably dismissed, along with the test of justification.

Labour will amend the Holidays Act to 2008 settings to protect the rights of workers to time off for rest and recreation and ensure that all NZ workers have access to 11 days off on pay for recognised public holidays, including Anzac and Waitangi Day.

This year New Zealanders only got nine of the eleven public holidays they are entitled to under the Holidays Act, because Waitangi Day and ANZAC Day fell on the weekend. Labour doesn't think that is fair.

ANZAC Day and Waitangi Day are of great importance. It is important that we continue to commemorate the days on the 6th of February and 25th of April. Labour will not change that, but we will restore to New Zealanders the holidays they deserve by legislating for the holidays for Waitangi Day and ANZAC to be taken on a Monday if they fall on a weekend.

Given that this situation only arises two out of every seven years we believe that it will be relatively easy for businesses to absorb the costs and in doing so ensure that workers get a fair go.

Labour will also amend existing provisions in the Employment Relations Act to provide for greater ease of collective bargaining at an enterprise or multi –employer level.

Labour will strengthen collective bargaining by amending the Employment Relations Act to provide greater legislative support, including multi-employer collective bargaining.

Labour will enable unions and employers to set up systems in which all workers contribute to the benefits of enterprise and multi-enterprise bargaining.



## Changing working environments

One of the consequences of the global financial crisis and the changes to work over the past twenty years is that good jobs have been too easily discarded in the quest for greater business efficiency, cost containment and profit.

Labour believes that no worker should be deprived of their economic livelihood without proper consideration of the consequences and good jobs should not be simply handed over to the whims of the market and “flexibility”.

Labour will defend decent jobs against outsourcing and reduced terms and conditions by providing for the right to strike when a collective agreement is in force where the employer makes a significant proposal for restructuring or outsourcing that in effect renders the collective agreement ineffective.

Labour will provide certainty for employers and employees in situations of redundancy by implementing the recommendations of the 2008 Ministerial Advisory Group report on redundancy and restructuring.

## Non-standard work

Labour believes that all workers should be protected against harms and risks that are broadly seen as being unacceptable and below a necessary floor where people should not be required to provide their labour. We are concerned at the growth in non-standard work, where large numbers of contractors, casual and temporary workers effectively have no rights.

Labour will ensure that workers employed in precarious forms of employment (such as labour hire, casual employment and contracting) are given similar rights to those in more traditional forms of employment.

Labour will also investigate and implement best practice statutory support and legal rights for dependent contractors, including minimum wage protection and other rights.

As a minimum, Labour will extend the right to organise and collectively bargain to contractors who are primarily selling their labour, as well as ensuring an effective and cheap disputes resolution procedure.

Labour will repeal the National Government's changes to the Employment Relations Act in regard to workers in the film and video production industries.

## **Government must step up**

The government has a key role to play as leader in requiring wages and work standards and the fair treatment of staff that all New Zealanders expect.

### ***Responsible contracting***

State agencies have a role in setting the example of good practice, not just with their own employees, but also with those organisations they contract for services.

Labour will require that all state agencies ensure that all organisations bidding for service contracts comply with good employer practices, including a history of adhering to employment legislation, paying fair wages and respecting the right of their employees to join a union and bargain collectively.

State agencies will also be required to consider other benefits such as health and safety systems and training opportunities when comparing tenders.

### ***Formal Social Partnership***

Labour believes genuine social partnership process is a better route for developing our economy. The National government has failed to recognise the role of the social partners as key players in the future of our country. Our goal is to build a sustainable, long term consensus around economic and social policy through the practice of engagement and negotiation with the important players in our economy.

Labour will set up a formal process for the social partners (government, employers, unions) to discuss and negotiate the use of economic and social instruments for the development of a high wage high skill economy.

### ***Flexible working hours***

For many New Zealanders, particularly women, there is a conflict between work, family and caring responsibilities. Resolution of this conflict will require reducing the inequalities between men and women in paid and unpaid work, giving individuals more choice about how to combine paid employment with family, education, leisure and community activities and promoting greater flexibility while maintaining security at work to enable the productive use of the whole workforce.

Caring for children and family members at home along with voluntary work throughout the community is vital work that benefits us all. Increasingly carers are finding it difficult to balance paid work and caring responsibilities. As the need for greater paid workforce participation of women and older workers continues this pressure will increase.

Labour will consider and as appropriate use the findings of the Review of the Employment Relations (Flexible Working Arrangements) Act to promote and strengthen flexible working arrangements.

## ***Pay and employment equity***

Labour has a strong commitment to addressing gender pay inequality and recognises that a comprehensive approach is necessary to address this systemic and enduring inequality. Labour proposes using the work of the Human Rights Commission and the Pay & Employment Equity Unit's detailed audits of the state sector gender pay gap to investigate legislative and policy changes required to close the gap. Solutions will need to be available to align with our human rights and employment relations frameworks.

Labour will develop legislative and policy responses that:

- Recognise the right to equal pay.
- Require a positive duty to advance equality.
- Provide the mechanism to determine work of equal value.

Labour will identify what we can learn from the work of the Pay and Employment Equity Unit to advance pay equity. We will seek solutions for all sectors of the economy (public and private).

Labour will ensure that information about pay rates is made available so that comparisons can be made and unfair inequalities in pay rates between men and women are revealed.

Labour will consider the introduction of a requirement that job vacancies have a minimum start rate advertised.

## ***Paid Parental Leave***

In order to give all children the best start possible and to reduce stress on parents, paid parental leave needs to be extended in coverage and longevity.

Labour will have children at the centre of its social policy which will include a detailed strategy for parental leave.

## ***Health and Safety***

*Labour's Health and Safety policy will be released separately.*