

Redundancy provisions – trends in the period 2003-2015.

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Redundancy protection for employees has assumed greater prominence since the start of the 2008-09 recession. It is particularly important at a time when an increasing number of workers are being dismissed without notice or redundancy compensation. Unlike most other OECD countries, though, New Zealand's employment legislation does not establish a regime for dealing specifically with employees affected by redundancy. What little protection employees have outside of their employment agreements derives from common law.

As we've noted in the past, the Courts in New Zealand have taken quite an active – some have suggested 'activist' – role in shaping the law regulating redundancy and affording to all workers some entitlements in the event their job is declared redundant. Yet, the status quo in New Zealand appears to be, unless such protocols are set out in the relevant employment agreement, there is relatively little protection for employees who lose their jobs as a result of redundancy.

Although rarely found in individual employment agreements, collective employment agreements (CEAs) negotiated in New Zealand typically include provisions dealing with the employer's obligations and employee's entitlements arising from redundancy. To this end, as we've reported in our annual publication *Employment Agreements: Bargaining Trends and Employment Law Update*, in each of the last twelve years there has been little change from one year to the next in the redundancy provisions for employees covered by collective agreements.

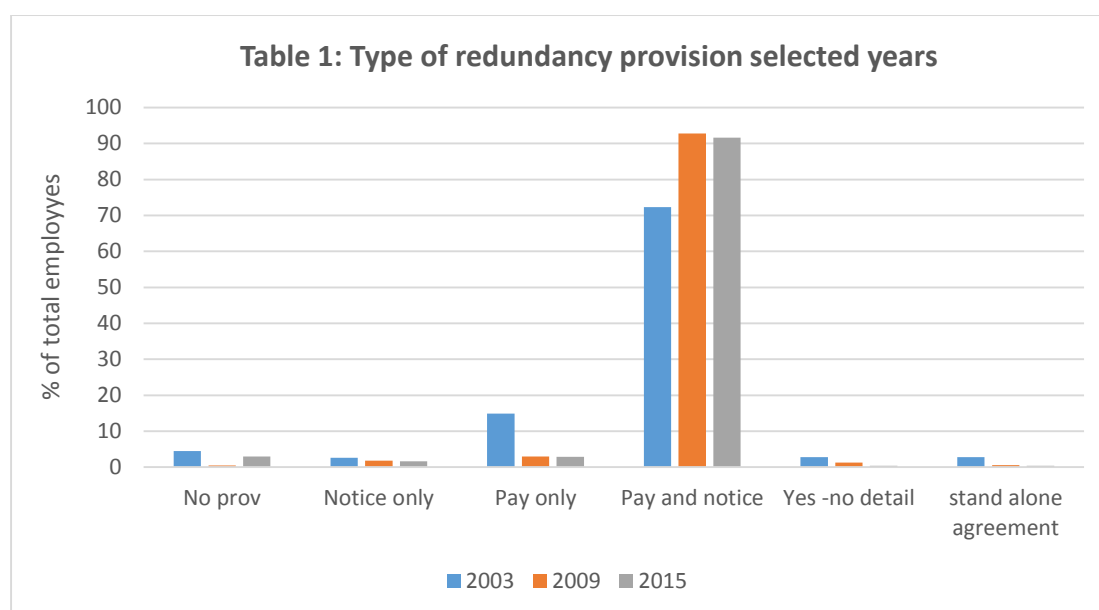
Despite this, an examination of redundancy clauses of our data across that timeframe shows, in fact, there have been some interesting changes in redundancy compensation entitlements which took place between June 2003 to June 2015. The specific years selected for comparisons (2003, 2009 and 2015) were selected for the following reasons:

1. By 2003, all collective agreements that had been settled under the *Employment Contracts Act 1991* were expired.
2. In 2003, New Zealand was led by a Labour Government, which was supportive of union organisation and collective bargaining, and it was a time of strong economic growth.
3. 1 June 2009, the cut-off date for data entry into our database of CEAs for that year, fell during the global financial crisis (GFC) and recession in New Zealand (2008-2009), a period when many companies faced financial difficulties and redundancies ensued.

4. During 2014-2015, New Zealand was in a period of economic growth and showed signs of having long-before recovered from the impact of the GFC and recession, and the Government enacted major changes to the ERA which are aimed at weakening collective bargaining.

Type of provision

As shown in Table 1, by June 2003, most employees were covered by collective agreements that included redundancy clauses with notice periods and specification of compensation payments (including that no payment will be made) in the event of redundancy. But, by June 2009, with 93 percent of collectivised employees knowing what their notice period and level of compensation would be in the event that they were made redundant, this had become the standard and it remained so in 2015.

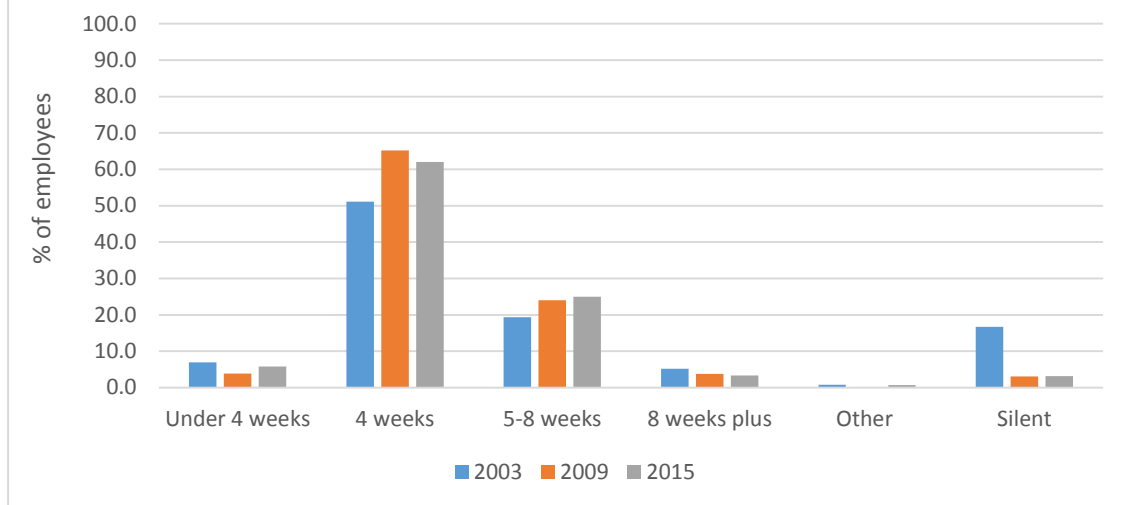


The changes in the type of redundancy provision in collective agreements to inclusion of both notice period and compensation suggests that, rather than leaving it up to the discretion of the Employment Authority or Employment Court to arrive at a ‘fair and reasonable’ quantum of pay and notice period, many employers opted for the certainty of negotiated entitlements.

Redundancy notice

Across the period 2003-2015, 4 weeks’ notice became the standard provision for employees in the event of redundancy. As depicted in Table 2, in 2003 it was more likely that an employee covered by a CEA would have no notice period specified in that agreement. This was particularly the case for people employed in central government, where 27 percent – compared with 17 percent of all employees covered by a CEA– had no notice period for redundancy specified in their employment agreement.

Table 2: Redundancy notice, all employees, selected years 2003-2015



The Courts in New Zealand have previously determined that, if no notice period is specified in the relevant agreement, the notice period will be what a ‘reasonable’ employer would give in the same circumstances. It would appear, therefore, that a notice period of 4 weeks was subsequently adopted as the ‘standard’ and included thenceforth in collective agreements. By June 2009, close to two-thirds of employees were covered by agreements with 4 weeks’ notice for redundancy, a level that has generally held through to June 2015. It is also noteworthy that, by June 2015, a significantly larger share of public sector employees on collectives than was the case in June 2003 were covered by agreements with a period of redundancy notice of longer duration than 4 weeks. Currently, a third of the country’s public sector workers on collectives are entitled to a notice period of 5-8 weeks.

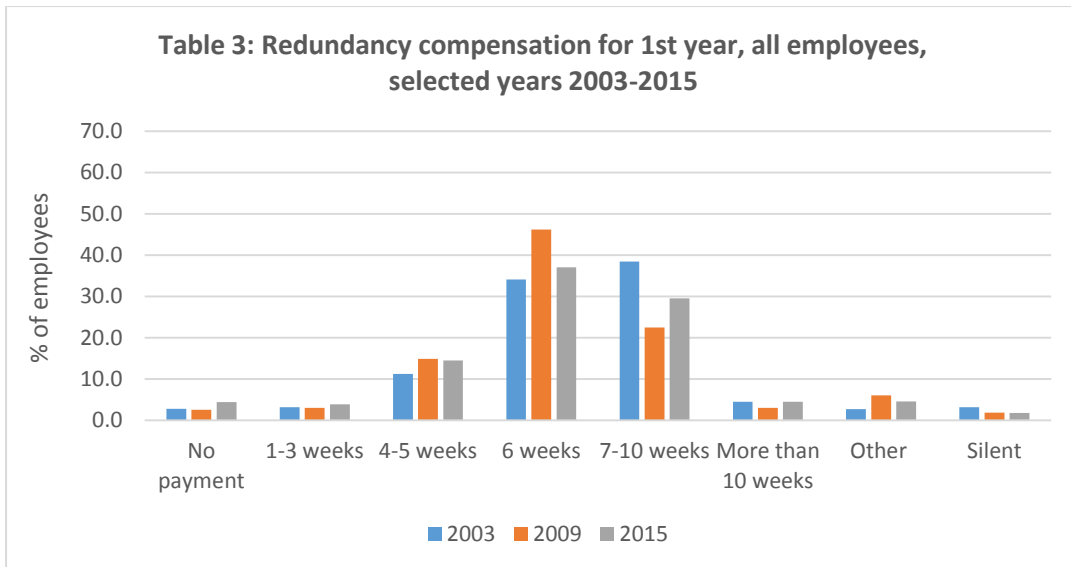
Redundancy compensation payments

Where CEAs provide for redundancy compensation payments, the quantum is typically determined according to a formula that provides for:

- ‘x’ weeks’ salary or wages in recognition of the first year of service, plus
- ‘y’ weeks’ salary or wages for each subsequent year of service.
- An upper limit can be set on the amount paid, sometimes as a dollar amount, or more frequently based on a maximum number of weeks’ salary or recognition of a maximum period of service with the employer.

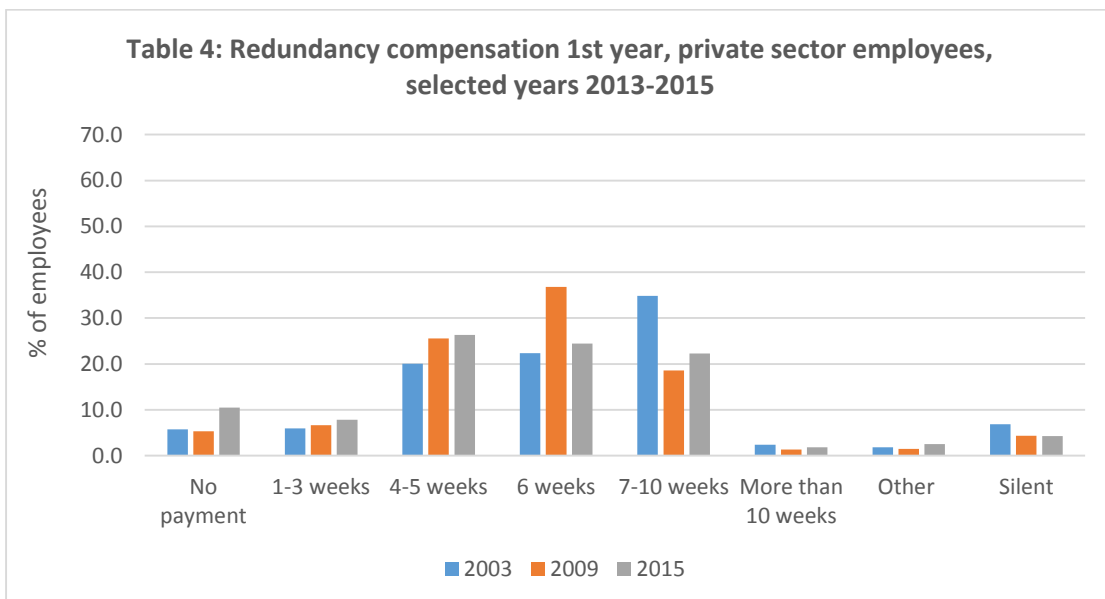
Redundancy compensation for first year of service

Unlike the notice period, no ‘standard’ level of financial compensation in the event of redundancy has been established (see Table 3). In June 2003, collectivised employees commonly received redundancy compensation for their first year of employment equivalent to 7 to 10 weeks’ pay. However, by June 2009, close to a half of such employees received 6 weeks’ compensation for their first year of employment; only 22 percent were entitled to between 7 and 10 weeks suggesting a significant cut back in entitlements around the recession period. In 2015, there appears to be a restoration, at least for some employees, of the higher level of entitlement, with 29.5 percent of employees now entitled to between 7 and 10 weeks payment.



This pattern is evident for both private and central government employees, with both sectors' employees now more likely to have lower levels of entitlement for the first year of employment than was available in 2003. For central government employees, though, the entitlement is currently most likely to be 6 weeks' pay (46 percent of such employees), while the pattern is more varied in the private sector. Only 24.5 percent of private sector employees have entitlement to 6 weeks' compensation with the most frequent entitlement (for 26 percent of private sector employees on CEAs) now 4-5 weeks compared with 7-10 weeks in 2003 (35 percent of such employees). Less than one quarter (22 percent) of private sector employees retain entitlement to 7-10 weeks' pay for their first year of employment, should they be made redundant.

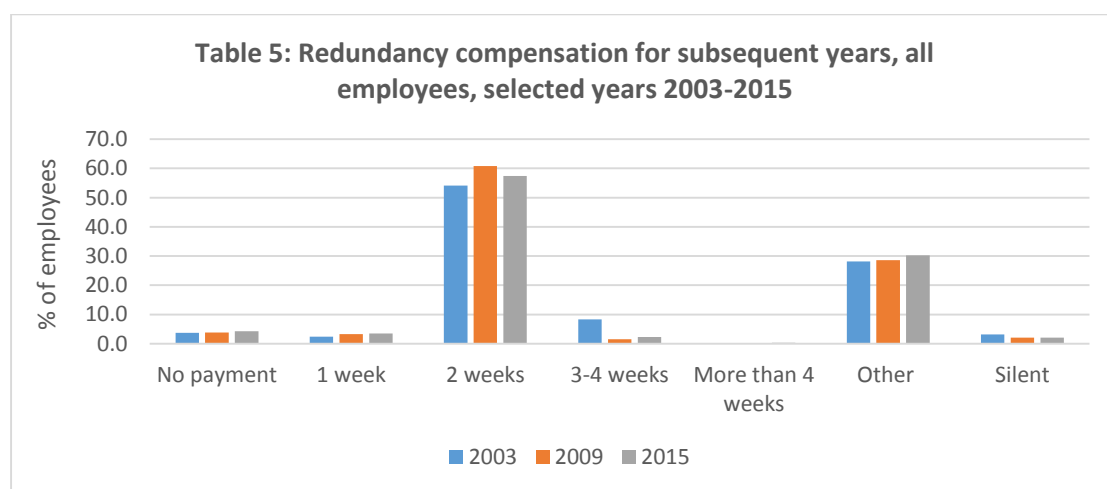
Of most interest in 2015, perhaps, is the rise in the proportion of employees in the private sector who are covered under collective agreements which stipulate that no payment will be made to employees made redundant (see Table 4 below). This group now makes up 11 percent of private sector employees on CEAs, compared with 5 percent in 2009 and 6 percent in 2003. In contrast, less than 1 percent of both central and local government employees have no entitlement to a payment in the event of redundancy.



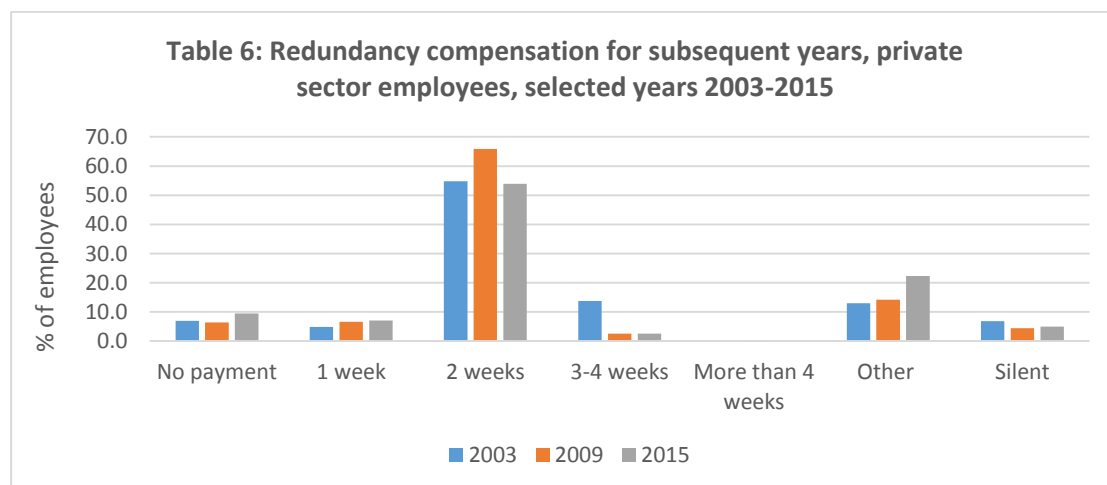
In contrast to the other two sectors, local government employees have seen an increase in their entitlement to redundancy compensation after their first year of employment. In 2003, 44 percent of such employees were entitled to 6 weeks' pay following a redundancy affecting their employment. Moreover, as the trend moved from agreements being silent on redundancy compensation to specification of entitlements (from 2003 to 2009), it became more common (53 percent) for collectivised employees in local government to have entitlement of 6 weeks'. However, in 2015, that entitlement for these employees is most commonly (42 percent of these employees) 7-10 weeks' pay.

Redundancy compensation for subsequent years of service

Compensation for employees with service beyond the first year has remained relatively flat across the review period (see Table 5 below). Two weeks' pay for each year of service beyond the first year, up to any stipulated maximum, was provided for a majority of employees (54 percent) covered by collective agreements in 2003 as it does in 2015 (57.5 percent). Despite this, there continues to be in 2015, as there was in 2003, a reasonably high proportion (currently 30 percent) of employees whose redundancy compensation is not linked to a standard formula of weeks of pay for each year of service. This compensation may be in the form of flat dollar amounts or a different type of formula related to years of service.



While the predominance of 2 weeks' pay for each year of service after the first year is evident in all three sectors, the 2008/2009 recession appears to have impacted on the availability of high levels of compensation, particularly in the private sector (see Table 6 below).



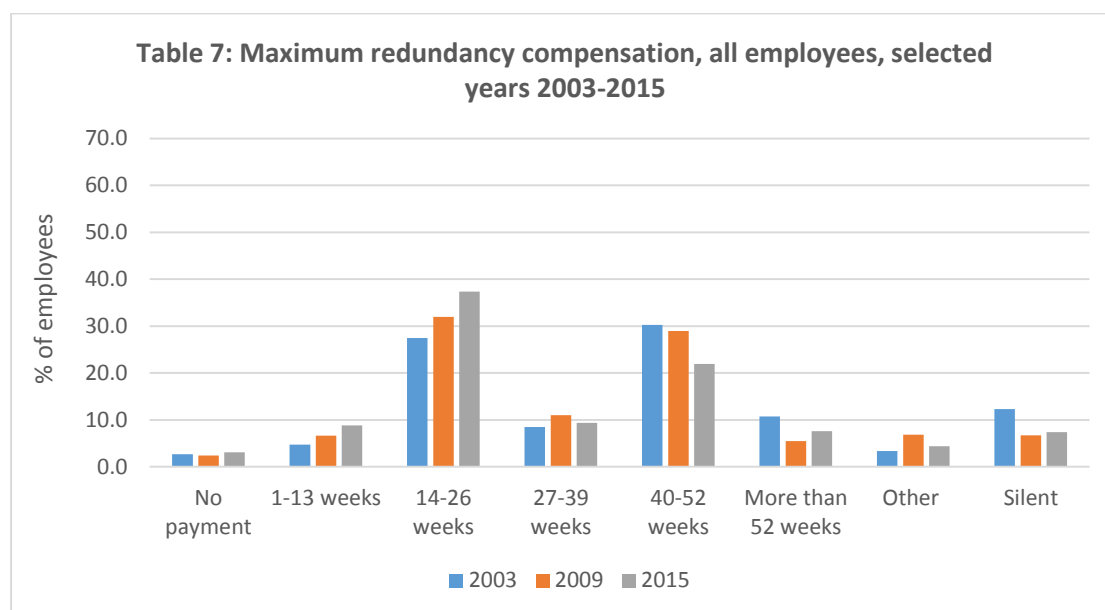
In 2003, 14 percent of such employees were entitled to more than 2 weeks compensation for the subsequent years of service, but by 2009 only 2.5 percent of private sector employees had

such provision and this is where it remains in 2015. It seems that employers moved to the lower level of provision (2 weeks for each year of subsequent service) during the GFC and the proportion of private sector employees who were entitled to 2 weeks compensation rose from 55 percent in 2003 to 66 percent in 2009. However in 2015, the proportion entitled to this 'standard' level has now dropped in favour of specification that no compensation payment will be made in redundancy or some form of 'other' provision that is not expressed a weeks of pay for each year of subsequent service.

In contrast, the proportion of collectivised central government employees who are entitled in the event of redundancy to 2 weeks' pay for each year subsequent to the first (until they hit the maximum provision) has remained steady at slightly over half, across the period 2003-2015. However, it is more common in the central government sector than either of the private or local government sectors for employees to be compensated using some other means than the standard formula of weeks for each year of service. It is not possible to determine why this is, but it may be linked to the limitations on budgets in the central government sector and such formulas may be easier to keep restraints on payments. The 2 week 'standard' is most evident in the local government sector where in 2015, almost all local government employees (91.5 percent) have this entitlement.

Maximum compensation for redundancy

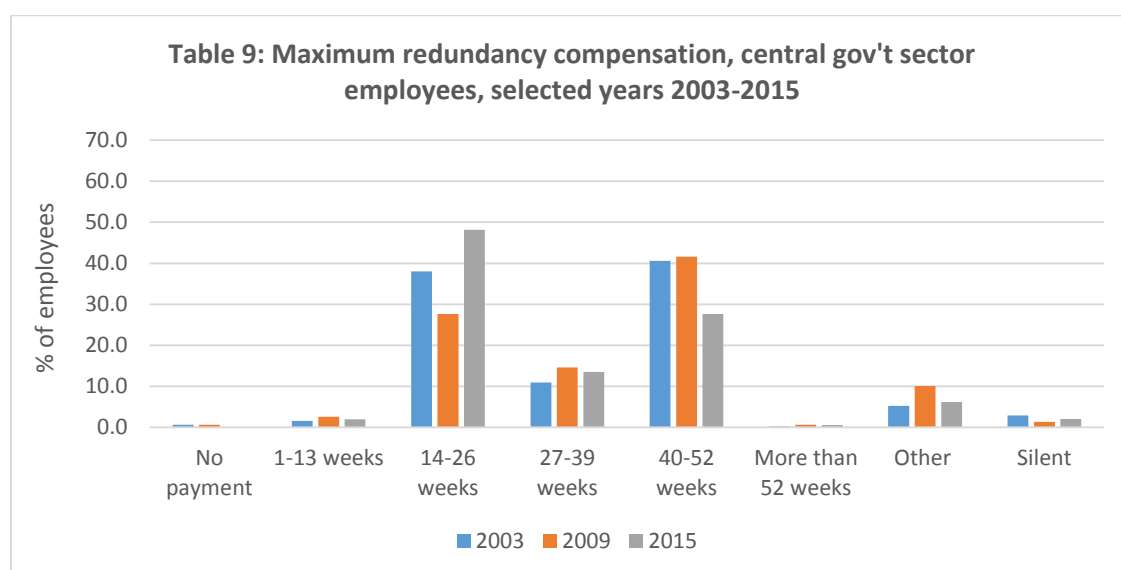
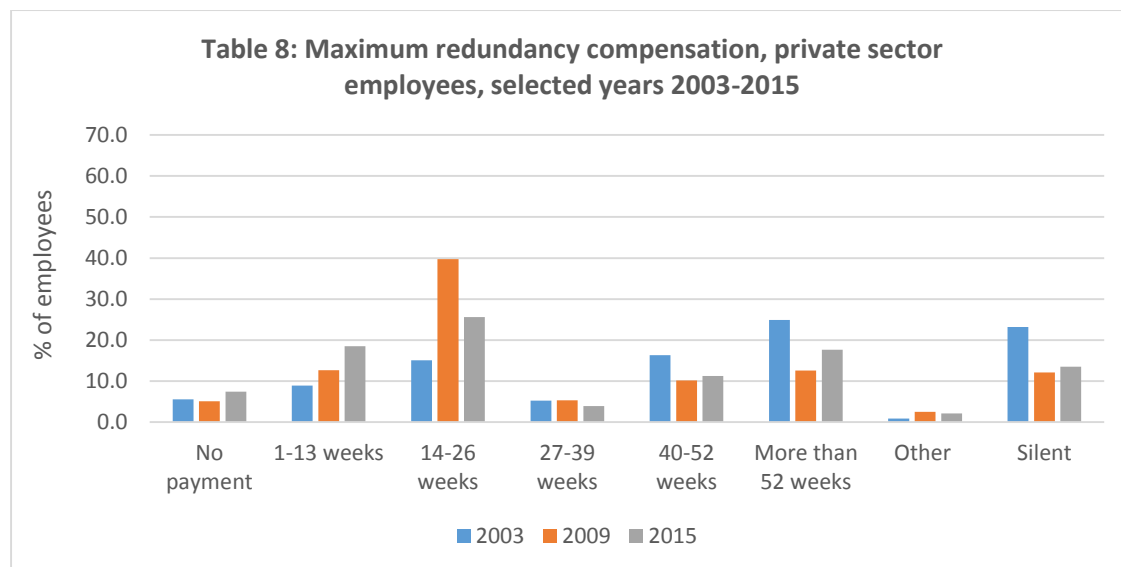
In the period under review (2003-2015), employees' maximum entitlements in the event of redundancy have decreased, and it is clear that the period of the economic recession, 2008-2009, contributed to this decline, as shown in Table 7.



In 2003, 41 percent of employees in our sample of collective agreements were entitled to 40 weeks or more in redundancy compensation. By 2015, however, this figure had fallen to 29 percent. At present, it is more likely that an employee will receive up to 26 weeks' pay as a maximum payment, with the largest proportion (37 percent) entitled to the equivalent of 14 to 26 weeks' pay in the event of redundancy.

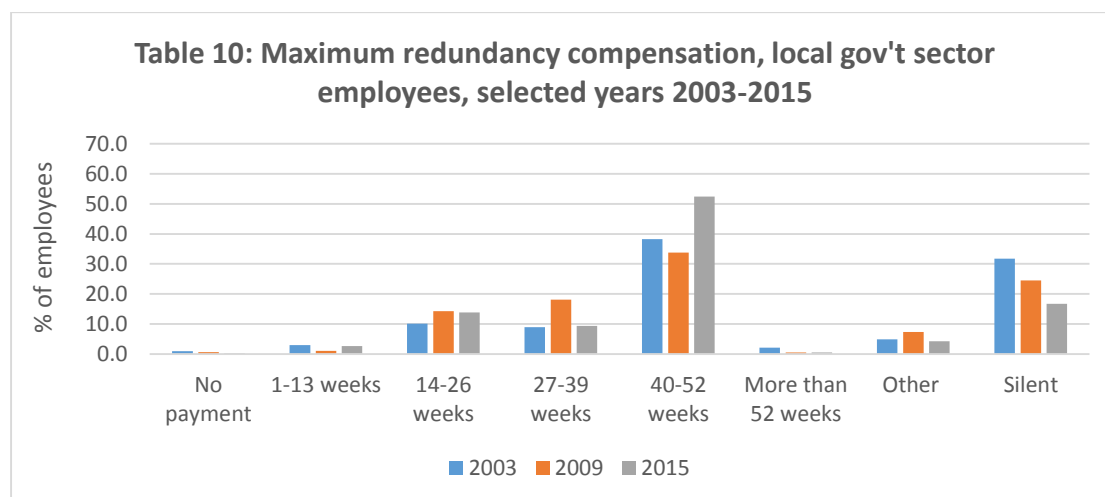
In 2009, there was an increase in the proportion of employees who were entitled to a maximum redundancy payment equivalent to between 27 and 39 weeks' pay. This appears to be a consequence of employers moving away from offering higher levels of compensation, as companies struggled through the GFC and recession. Nonetheless, in the years between 2009 and 2015, the levels of entitlement to redundancy compensation have further decreased, even as the economy moved out of recession and into a growth period.

Importantly, though, when we examine the trends in each of the sectors, different patterns emerge. As shown in Table 8, the reduction in maximum entitlements in the private sector primarily occurred in the period 2003-2009 and in particular there was a dramatic drop in employees entitled to more than 52 weeks' maximum compensation largely in favour of between 14 and 26 weeks' entitlement. By 2015, with the country in a more stable economic position, the proportion of employees entitled to the higher levels had increased, albeit not to the levels of 2003.



In contrast, Table 9 shows that the central government sector saw a reduction in entitlements only since 2009, following the GFC and recession and the election of an austerity-minded National-led Government. In the six years preceding then, maximum compensation thresholds negotiated in collective agreements in New Zealand had increased, both in terms of their average level and, to a lesser extent, their prevalence. In 2003, 52 percent of central government employees had their entitlement to redundancy compensation capped at a level equivalent to more than 6 months' pay. By 2009, the share of collectivised employees in New Zealand with at least this redundancy compensation threshold had increased to 57 percent. But, by 2015, only 42 percent of central government employees on collectives had this level of entitlement, with half of that group having entitlement to less than 6 months' maximum redundancy pay.

Unlike the other two sectors more than half of local government employees included in our sample of collective agreements in 2015 have a maximum payment entitlement of 40 weeks or more in the event of redundancy (see Table 10). The trend across the sector is to increase levels of maximum entitlement, accompanied by movement away from coverage by agreements that are either 'silent' – suggesting local authorities have defined a limit on the compensation for which they are liable rather than possibly have 'no limit' on maximum entitlement – where the quantum of redundancy compensation continues to increase along with the affected employee's length of service to the organisation. As in the private sector, the proportion of employees with the higher levels of compensation dropped between 2003 and 2009; however, by 2015, the most common redundancy provision in local government collectives had returned to 40-52 weeks.



The Future

Across all sectors, the share of employees in New Zealand on collective employment agreements that specify no compensation in the event of redundancy is on the rise. Nevertheless, the period of redundancy notice provisions have settled into a standard of 4 weeks' and the compensation payment for each subsequent year of service to the employer beyond the first appears to have standardised at 2 weeks. It also appears that thresholds for compensation for years worked with an organisation will persist for the time being at comparatively low levels, at least in the private sector, where maximum compensation equivalent owed to an employee in the event of a redundancy is most commonly set at between 1 and 13 weeks'. This lowering of the maximum entitlement threshold appears also to be flowing through to the central government sector, where the norm for employees covered by collective agreements is now 14 to 26 weeks' maximum redundancy compensation.