

Spotlight on CAB Clients Without Employment Agreements

September 2017





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Introduction

New Zealand has a comprehensive set of employment laws to ensure that workplaces operate under minimum employment standards and that good faith behaviour underlies all aspects of the employment relationship. Despite this, Citizens Advice Bureaux (CABs) around New Zealand are regularly responding to enquiries from clients whose minimum employment rights are being breached.

In many of these situations the client has not been provided with a written employment agreement by their employer, even though this is a fundamental requirement of New Zealand's employment law. The absence of a written agreement results in a lack of clarity about agreed terms and conditions. This means that employees often struggle to assert the most basic of their employment rights and are subjected to unfair, unjust and illegal practices, and in some cases, to blatant exploitation.

While the lack of a written employment agreement doesn't mean an employee is completely without rights and remedies, the inherent vulnerability of an employee in this situation means they are at a huge disadvantage. The power imbalance in the employment relationship, and the critical importance of the income derived from it, mean that many employees hesitate to question or challenge their employer's disregard for the law.

This report puts a spotlight on CAB clients who have not been provided with a written employment agreement by their employer and highlights the related breaches of employment rights experienced by these individuals. The issues are reflected through the situations of CAB clients as told to us. Identifying details have been removed and some details have been altered to ensure privacy is protected;

however the essence of the client's circumstances and experience remains. As much as possible, we have allowed the client situations to speak for themselves.

Executive summary

A review of client enquiries made to CABs over a six month period from 1 December 2016 to 31 May 2017 revealed 473 cases of employees who were employed without a written employment agreement. The failure by employers to provide these employees with a written employment agreement constitutes a breach of a foundational requirement of New Zealand employment law.

Some of the clients we saw had been employed for many years without ever having the terms of their employment put into writing. Others came to us very soon after having been employed. In our sample, the period of time without a written employment agreement ranged from under 10 days to over 10 years. A significant percentage of those without a written employment agreement were under the age of 30 years – 31% of the enquiries we analysed. This is substantially higher than the proportion of enquiries the CAB usually receives from this age group, which constitutes 17% of CAB clients across all categories of enquiry.

The absence of a written employment agreement affected these clients in a number of ways, with the consistent theme being the vulnerable position employees were in because there was no written record of the terms and conditions of their employment. This was evidenced by the many additional breaches of employment rights experienced by these individuals. In a number of situations it was the employee's request for a written employment agreement that resulted in further abuses of their employment rights.

Some of the common additional breaches of employment rights we saw were:

- Employer terminating the person's employment without regard to fair process - and sometimes this happened because the employee was trying to assert their right to have a written agreement.
- Employer unlawfully applying the 90 day trial period. The trial period can only be applied if an employee signs up to it in a written employment agreement before they start work.
- Employer denying an employee their minimum entitlements relating to pay such as regular payment of wages, payment of at least the minimum wage and protection against unlawful deductions from wages.
- Employer reducing an employee's hours of work from what has been verbally agreed, and doing so without discussion or negotiation with the employee.

- Employer changing other terms of employment from those that have been verbally agreed, and doing so without negotiation, for example requiring increased hours of work, adding responsibilities and altering the nature of the employment from permanent to casual.
- Employer denying an employee their entitlements to sick leave.

It is a far too common experience for employees to be employed without being provided with a written employment agreement. This is a clear breach of the law and has significant consequences, making the affected employees vulnerable to further breaches of their employment rights. We believe that non-compliance with the requirement to provide a written employment agreement needs to be taken seriously. Action needs to be taken to educate and upskill employers about their legal responsibilities and to ensure there are consequences for clear breaches of the law.

We recommend that the following actions be taken:

- That the Ministry of Business, Innovation and Employment (MBIE) puts more emphasis on educating and upskilling employers, including ensuring wide promotion of the web-based Employment Agreement Builder tool.
- That, given the various interactions employers have with government agencies, an integrated cross-government approach should be taken to ensure that minimum employment standards are upheld, in particular the requirement to have a written employment agreement.
- That MBIE ensures that free, independent, confidential information, advice and support is available to employees to help redress some of the inherent power imbalance in the employment relationship, and in particular that MBIE considers targeted education for young people about their employment rights.
- That the option of reporting a breach of employment law is made more visible on the MBIE website so that it is easier to report an employer's non-compliance with the law. Individuals reporting a breach should be able to do this anonymously if they wish, and be protected from negative consequences.
- That the Labour Inspectorate should be resourced to a level that allows for consistent action to be taken in response to reported breaches of employment law.
- That options for a 'good employer' accreditation system be explored that makes business compliance with good employment practices transparent and allows consumers to make informed choices about their spending based on whether a business treats their workers fairly and in accordance with the law.

Background

Growing demand for information and advice about employment issues

The aims of Citizens Advice Bureau (CAB) are:

1. To ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively.

Me noho mataara kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei ana ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.

2. To exert a responsible influence on the development of social policies and services, both locally and nationally.

Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.

From over 80 locations around Aotearoa New Zealand our 2300 trained CAB volunteers assist people by providing a free, impartial and confidential service of information, advice and advocacy. We work to empower individuals to resolve their problems and we use the insights we gain from our work with clients to advocate for socially just policies and services for all New Zealanders.

In the 2016/17 financial year, the CAB assisted with over half a million (525,525) client interactions across the range of issues that affect people in their daily lives. These included relationship issues, tenancy rights, employment problems, immigration processes, and problems relating to faulty goods or poor service. Our aim is to help people know their rights and feel empowered to act on them.

In the year ended 30 June 2017, CABs across New Zealand received 15,000 enquiries from clients who had an issue about their conditions of work. CABs have seen a steady growth in demand for information and advice about employment rights. The total number of enquiries to CABs about conditions of work has increased by 37% over the past 5 years.

The Employment and Business section of our website, www.cab.org.nz, is consistently one of the top five most frequently visited sections of the website. These pages were viewed over 381,000 times in the year from July 2016 to June 2017. The employment agreements section was viewed 84,312 times, which is almost twice the number of visits that were made to this section in the previous year (44,886 views).

About this report

This report looks at the issues CAB clients have faced when their employer has failed to meet the legal requirement to provide them with a written employment agreement.

The content of this report has been developed primarily from the analysis of client enquiries about conditions of work made to CABs in the six month period between 1 December 2016 and 31 May 2017. Our findings are limited to what we are seeing in our service, but we note that many of the themes in our report are consistent with the findings of the Statistics New Zealand June 2016 Quarter Household Labour Force Survey¹ and with reoccurring employment law breaches reported in the media.²

The Statistics NZ survey concluded that almost one in ten employees in New Zealand is working without a written employment agreement. This equates to around 171,000 employees. An additional 56,300 people said they did not know whether they had an agreement.³ Our review of client enquiries confirms that not having an employment agreement, or access to one, continues to be a problem in the New Zealand labour market.

The issues identified in this report are drawn directly from the client enquiries we analysed. Client stories have been used to illustrate the reoccurring employment law breaches experienced by this group of clients. Identifying details have been removed from the cases provided, but the essence of the client's circumstances remains.

What the law says about employment agreements

The main legislation governing employment relationships is the Employment Relations Act 2000.⁴ A fundamental principle underlying the Act is that all parties in an employment relationship (employers, employees and unions) have a responsibility to act in good faith towards each other. Good faith includes acting honestly, openly and without hidden motives, treating each other with respect, and working constructively and positively together.

¹ Statistics New Zealand (2016) *Union membership and employment agreements – June 2016 quarter* www.stats.govt.nz/browse_for_stats/income-and-work/employment_and_unemployment/improving-labour-market-statistics/union-memship-emplmt-agmt.aspx.

² RNZ (2017) *Mainfreight regrets 'high price' for contract error* www.radionz.co.nz/news/political/334746/mainfreight-regrets-high-price-for-contract-error; RNZ (2017) *Half of audited kiwifruit companies underpaid workers* www.radionz.co.nz/news/country/335331/half-of-audited-kiwifruit-companies-underpaid-workers; The Spinoff (2017) *An honest day's pay? How hospo workers are getting screwed by unpaid work trials* www.thespinoff.co.nz/society/17-05-2017/an-honest-days-pay-how-hospo-workers-are-getting-screwed-by-unpaid-work-trials/.

³ Above n 1.

⁴ <http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html>.

The law requires that every employee has a written employment agreement.⁵ This requirement is regardless of whether the employee is employed on a casual, part-time, fixed term or permanent basis.

When entering into an employment agreement the employer must provide the employee with a copy of the intended agreement, and give them the opportunity to seek independent advice. The employer then needs to consider any issues that the employee raises and respond to them.

The employer must hold a signed copy of each agreement on file. If an employee asks for a copy of their employment agreement, the employer must give it to them, as soon as is reasonably practicable.

Employment agreements are important documents because they set out the fundamental terms and conditions of the employment relationship. At a minimum, an individual employment agreement must include:⁶

- The names of the parties to the agreement
- A description of the work to be performed
- The location of the place of work
- The hours to be worked
- The wage or salary payable to the employee
- An explanation in plain language of how to resolve any employment relationship problems
- Whether or not there will be trial periods or probationary arrangements, and
- If the employment is fixed term, the nature of the employment.

Employers who do not comply with the law can be fined:⁷

- up to \$50,000 if the employer is an individual
- up to \$100,000 if the employer is a corporation

Labour Inspectors are also able to issue an infringement notice on-the-spot for any breach of employment laws.⁸ An infringement notice carries a fine of \$1,000.

⁵ Employment Relations Act 2000, section 65.

⁶ Employment Relations Act 2000, sections 65(2), 66(4).

⁷ Employment Relations Act 2000, section 142G.

⁸ Employment Relations Act 2000, section 235C.

Enquiries from CAB clients without employment agreements

A review of client enquiries made to CABs over the six month period from 1 December 2016 to 31 May 2017 revealed 473 cases of employees who were employed without a written employment agreement.⁹ This section describes some of the characteristics and circumstances of these clients and goes on to highlight the additional breaches of employment rights they experienced.

New employees and long-term employees alike

People coming to the CAB who were without an employment agreement were in a range of circumstances. While some were only a few days or weeks into a new job, there were also clients who were long-term employees (employed for 10+ years) who had never had the terms of their employment put into writing.

Regardless of the duration of the person's employment, the absence of a written employment agreement provides a fragile foundation for the relationship as it goes on, with employees in a highly vulnerable position. Employees are often unsure of their rights. Where they do have an awareness of their rights, they are often anxious about asserting these in the absence of a written agreement. Once employment has commenced, the request to have the terms and conditions of employment put in writing, or even just to clarify them, often appears to exacerbate this vulnerable status, with employers taking the opportunity to 'review' terms, and in some cases to terminate the person's employment.

Disproportionately high number of people under 30

Of the enquiries from clients without a written employment agreement 31% came from people under 30 years of age. This is substantially higher than this group's usual representation in the CAB client population where 17% of enquiries come from clients under 30. The disproportionately high number of under 30 year olds without a written employment agreement suggests a greater degree of exploitation by employers of younger employees, who may have less experience or confidence in negotiating an employment relationship and less awareness of their rights.

⁹ We reviewed 2,723 enquiries in total from the period 1.12.16-31.05.17. These were enquiries categorised as relating to employment agreements and conditions, dismissals, or were flagged by our CAB volunteers to alert us to the lack of an employment agreement.

Employment law breaches experienced by CAB clients without a written employment agreement

When there is no written employment agreement in place, both parties lack clarity about the terms of the relationship. A written employment agreement provides security and protection for both the employer and the employee; however the inherent power imbalance in favour of the employer means that having the terms of the relationship recorded is of particular importance for the employee.

Our analysis of enquiries from CAB clients without an employment agreement has highlighted that the absence of a written employment agreement is often symptomatic of further breaches of basic employment entitlements. Following are examples of the kinds of breaches of employment rights being experienced by CAB clients who are without an employment agreement. These have been grouped by the nature of the breach. Anonymised client enquiries have been used to highlight each issue.

1. Unfair dismissal
2. Breach of rights relating to trial periods
3. Lack of clarity about notice period
4. Breach of rights in relation to pay
5. Breach of the right to work hours agreed
6. Changes to terms of employment without negotiation or agreement
7. Breach of the right to sick leave
8. Exploitation of migrant workers

1. Unfair dismissal

Employees without a written employment agreement are in a highly vulnerable situation when their employer terminates their employment on the spot, without any regard to fair process. Enquiries show that this can happen whether the employee has been in the job for ten days or ten years. In some situations the reason for dismissal appears to be the fact that the employee has asked for the written agreement to which they are legally entitled.

Client was dismissed from her job after being employed for over ten years. She had never received a written employment agreement. She felt she had been wrongfully dismissed but wasn't sure how to challenge the dismissal.

Client was employed full-time but never received an employment agreement or payslips. When he asked his employer about getting these things he was instantly fired.

Client came to the CAB concerned about the treatment of her colleagues. They had no employment agreements. The workers were fired because the employer didn't like that they were also working for another business. The dismissed employees were not given a fair process – there was no notice given and the employer asked our client to pass the message on to the other workers that they were fired. Our client wanted to know what rights these employees have.

Client's son, a student, has worked Saturday's for the past 3 years. He does not have an employment agreement. When he asked for a morning off to sit an exam, the employer told him he needed to make a choice; work or studies. He has never had any time off from his job and said he really needed to sit the exam. The employer fired him on the spot.

Client has been in her job for 4 years. Despite asking for a written employment agreement, she does not have one. Client and employer recently agreed to her having three weeks' leave without pay. Last week she was told the business needs have changed. More workers were needed during the time she wants off and so her employment is terminated.

Client worked as a caregiver. He had a day off work due to illness. When the client returned to work he was told his work had been terminated. When the client tried to talk to his employer about unpaid wages he was trespassed from the property. Client didn't have a written agreement and wanted to know what his rights were.

2. Breach of rights relating to trial periods

In situations where there is no written employment agreement some employers are using a 90 day trial period to dismiss employees without a reason, even though a trial period has not been discussed or agreed to. This is clearly in breach of the requirements that a trial period is only valid if agreed to in writing by both parties before the employee starts work.¹⁰ It would likely constitute an unjustified dismissal; however, because clients have no written agreement they are left feeling vulnerable and unsure about their rights.

¹⁰ Employment Relations Act 2000, section 67A.

Client has been working in a restaurant as a cook. He received very little training and felt like he was thrown in the deep end. The owners have now told him they are letting him go on the basis that he is still under a 90 day trial. He has never been provided with a written employment agreement and is sure that there has not been any mention of a trial period before now.

Client was told she is on a 90 day trial but is yet to see a written employment agreement. She sustained a work-related injury shortly after starting her job and has been off work recovering. Her employer has asked her to return to work immediately because they are very busy. If she cannot return on Monday, he has told her that given the end of the trial period is approaching she might as well not come back at all.

Client had been given 2 days' notice that her employment was ending. No reason was given. She had been working for just under three months. Client was wondering if this was unfair. She had not been given an employment agreement, despite having asked for one.

The lack of an employment agreement can also affect an employer when they want to use the 90 day trial process.

Client is an employer. He has recently dismissed a manager under the 90 day trial provision. He also wants to dismiss another employee who has only started work in the last month but is really no good at her job. The second employee was hired by the manager but was not given a written agreement. The employer wants to know if he can dismiss the employee under the 90 day trial law.

In other situations the employee may not have access to their employment agreement, which means they are in a very vulnerable position when the employer asserts certain terms, and the employee may be unable to verify whether a trial period was even recorded.

Client has been working as a cleaner for 3 months. She signed an employment agreement but has never been provided with a copy. Last week she was sacked with no notice because her employer has got other people to do the work at a cheaper rate. Her employer won't discuss things with her and she wonders what she can do.

3. *Lack of clarity about notice period*

Absence of a written employment agreement can mean there is a lack of clarity about what is a reasonable period of notice for the employee to give if they intend to resign. When employees without an employment agreement leave without giving

reasonable notice they risk their employer withholding pay. For the employer, failure to provide a written employment agreement can mean they are left short-staffed if an employee who feels no responsibility leaves without giving adequate notice.

Client has left his job without giving notice. Now his employer is refusing to give him pay owing for his last week of work. Client does not have an employment agreement.

Client has no written employment agreement. He recently gave 2 days' notice that he was leaving his job. He now wants help to recover a week's pay that is owing to him.

Our client is not happy in her work and wants to resign. However she doesn't have an employment agreement and therefore doesn't know how much notice to give her employer.

4. Breach of rights in relation to pay

The absence of a written employment agreement can mean that employees are denied their minimum entitlements in relation to pay, such as payment of wages, payment of at least the minimum wage and protection against deductions from wages.

Client, who is on a student visa, was working for an employer who was paying him well under the minimum wage at less than \$10 an hour. The client had not been provided with a written employment agreement despite frequently asking his employer for one. When the client complained, the employer refused to pay money owing to him and later denied that the client had ever worked for the company.

Client is employed as a manager for a business. She has worked there for over 20 years, and has never had a written employment agreement. The business is struggling, and she not been paid by the business owner for several months. She wants to know how to end the relationship and still get paid for the work she has done.

Client is working full-time and has no employment agreement. The employer deposited the client's wages for the week into the account of another employee on the basis that the client owed this person money. The client understands this is unlawful but doesn't want to make a big issue of it because he doesn't want to lose his job. However, he does want his money back, and wants to make sure the employer doesn't make other deductions from his pay without his consent.

Client began a new job and after four days working realised it was not for him. He told his employer he would like to resign. The employer agreed and asked him to leave immediately. Client asked the employer for the pay owing from the work he had done. His employer refused, arguing it wasn't worth it because he had done so little. There is no written employment agreement.

Client, a recent migrant, works fulltime in a shop as the sole employee. She doesn't have a written employment agreement. She is unsure about her entitlement to a lunch break and whether this has been factored into her wages as when she recently took a 30 minute lunch break she was surprised to find that her employer deducted the time from her wages.

5. Breach of the right to work agreed hours

An employment agreement must contain the agreed hours, or an indication of the hours, that the employee will work.¹¹ When there is no written employment agreement the employee is vulnerable to the employer making changes to what was agreed verbally, and can find it difficult to challenge this because there is no written proof of what was discussed.

Client works in hospitality and has no written employment agreement. Employer has reduced the client's hours of work from what she was offered when she applied for the job. The employer also regularly phones and says not to come in. The client needs the hours of work that were discussed but the employer hasn't taken notice of this. She feels she gets a worse deal than others who have a signed employment agreement.

Client has been working for a year. An employment agreement has still not been signed. Although he is paid on a regular basis, he is often told he is not needed for work. At other times he is called in at very short notice.

Client has no hours on the roster this week. What can he do? He needs work so he can pay his rent. He has no written employment agreement but he does get

¹¹ Employment Relations Act 2000, section 67C.

pay slips.

Client, on a working holiday visa, was frustrated because her hours of work were getting changed from week to week. She has now been told that she will be getting fewer hours of work because she does not do what is required quickly enough. She also hasn't been paid for a recent public holiday which fell on a day she would normally work. She does not have an employment agreement, despite asking for one several times.

Client has been working for 9 months without a written employment agreement. When she started, she agreed to work specific days and hours and was told that she may be needed to work at other times. She told the employer she was prepared to be flexible but may not always be available to work due to other commitments she has. She understood that the employer accepted that limitation. This week she was called in to work twice at very short notice. She was unable to work the full hours on one of those days but said she could do part of the day. The employer has now told her she must either work a much wider range of days or leave.

6. Changes to terms of employment without negotiation or agreement

It is unlawful for an employer to unilaterally make changes to an employee's terms and conditions of employment. Clients without an employment agreement are highly vulnerable to having the terms of their employment changed without negotiation or agreement.

Client was initially employed in a part-time position. She didn't have an employment agreement. She was recently asked to increase her hours to work full-time, and told that she would have some additional responsibilities as part of this. When she asked her employer for fair remuneration for the additional responsibilities and to have a written employment agreement, she was threatened with losing her job.

Client has worked in a full-time, permanent position for 5 and a half years. He has no written employment agreement. Recently he suffered a health crisis which meant he could not work for 6 weeks. When he returned to work he was told he is now a casual employee on an hourly rate.

Client has been working in a café for over a year. She has repeatedly asked for an employment agreement. It has finally been given to her but the hours are less than she previously agreed. The manager has also made changes to her duties without consulting her. She has arranged to meet with the manager, and is taking a support person with her. She wants to know what she should say at the meeting.

7. Breach of the right to sick leave

After six months of continuous employment, employees are entitled to five days' sick leave with pay.¹² Lack of a written agreement can result in breaches of this right.

Client works 12 hours a week in the hospitality industry. She has worked regular weekend shifts for more than a year. She does not have an employment agreement. She was recently unable to work one shift due to ill health. Her employer has informed her that she is not entitled to be paid sick leave because she is a casual worker. Our client thought she was employed on a permanent part-time basis and wants to know what her rights are.

Client's doctor has provided a medical certificate to support his need for one week off work. Client has worked for the company for two years however he has only recently signed an employment agreement. His employer has told him he is not eligible for sick leave because his employment agreement is less than six months old.

Client rang regarding his wages which were less than what he expected. He had been employed full-time for a year. He had a week off when his son was in hospital and his employer had told him this was covered in his wages. He did not have a written agreement but his employer had told him that he was on a 'normal full time contract'.

8. Exploitation of migrant workers

Our analysis of enquiries highlighted that migrant workers can be particularly vulnerable to the abuse of their employment rights.

¹² Holidays Act 2003, section 63.

Client, a migrant on a work visa, has no employment agreement and is being paid less than the minimum wage. He recently had an accident which damaged company equipment and caused him an injury. The employer refused to pay him after the accident because he says repairing the damaged equipment is not covered by insurance, and the employee's sick leave is not covered by ACC.

Client, a student, was told when she got her job that she would be on trial for 90 days. She did not have a written employment agreement. She worked for two weeks and was then dismissed on the grounds that her English was not good enough. She has not been paid for the work done and wants to know what her rights are.

Client has a student visa and is working part-time at a restaurant. She wants to know if she is entitled to holiday pay. She has no written agreement and is being paid in cash.

Client is on a work visa. He has recently quit his job as he was required to work 50 hours a week and was only being paid for 40 hours. He was not given an employment agreement and has no record of his employment. He has been offered a new job but is now worried about the impact on his work visa.

Where to from here?

Our analysis of CAB client enquiries has highlighted that the issue of employees being employed without a written employment agreement is widespread and is symptomatic of other abuses of employees' rights. Not providing a written employment agreement is a clear breach of the law and means that the principle of good faith as a basis for the employment relationship is totally undermined.

While having a written employment agreement doesn't guarantee that the employee's other employment rights are respected, the fact of a written record of the terms and conditions of employment means that there is clarity about the relationship between the parties. This provides the employee with a firmer foundation for asserting their other rights and seeking redress when these rights are not upheld.

Enquiries to the CAB show us that a lack of certainty about agreed terms and conditions means employees are vulnerable and are often subjected to a range of further abuses of their employment rights. These include termination of employment without reason or fair process, trial periods being unlawfully applied, and breaches of rights in relation to pay, to hours of work and to leave entitlements. Young people appear to be particularly vulnerable, and migrant workers also feature as a group who are having their rights abused.

We believe that non-compliance with the requirement to provide a written employment agreement needs to be taken seriously. Action is required to both upskill employers who are failing in their legal responsibilities because of a lack of knowledge or skills, and to ensure there are consequences for those who knowingly flout the law and abuse the rights of their workers.

Whilst CAB is not in a position to come up with detailed solutions, we have highlighted some of the areas where we think action can be taken, including recommending pathways for improving compliance with the legal requirement to provide a written employment agreement.

More emphasis on educating and upskilling employers

We encourage the Ministry of Business, Innovation and Employment (MBIE) to ensure that all employers are educated about their responsibilities. Although there is a wide range of information and support available for employers through the Employment New Zealand website (www.employment.govt.nz/), it seems that many of the key messages about the legal obligations of an employer are not getting through. Access to information and advice that supports good workplace practice is essential so that employers have no option but to be fully aware of their obligations

when taking on workers, including the requirement that every employee be provided with a written employment agreement.

In some circumstances we acknowledge that employers may be surprised to know they are not complying with the law and may have the best of intentions to be fair and reasonable. This is particularly relevant given the proliferation of small businesses in New Zealand (97% of all enterprises have fewer than 20 employees),¹³ where employers may be less equipped for the legal and other responsibilities that come with the role. Information and education resources need to be delivered to employers so that those who operate a business, no matter the size, understand and can fulfil their obligations.

In particular, we recommend that MBIE promotes the availability and use of the Employment Agreement Builder (<https://eab.business.govt.nz/>) to employers, especially those running small to medium enterprises where there may be little human resource infrastructure within the business to support good employment practice. This tool makes the task of creating a written employment agreement very straightforward - there really is no excuse.

A cross-government approach

We believe a cross-government approach should be taken to address employers' non-compliance with minimum employment rights. Employers have multiple points of contact with government agencies. Every employer interacts with the Inland Revenue Department and ACC. Employers may also deal with agencies like WorkSafe NZ, the Companies Office or the Charities Services, the Ministry of Social Development (MSD) and Immigration NZ.

We believe an integrated approach should be taken so that the various interactions employers have with government agencies are used more effectively to reinforce, and enforce, minimum employment rights, including the requirement to provide every employee with a written employment agreement. Actions taken across government could range from providing employers with prompts and education through to requiring the employers report on their compliance with minimum employment standards.

Support employees with knowledge of their rights

Employees need to be equipped with knowledge about their rights. It is essential that employees have access to free, independent, confidential information, advice and support to counteract the inherent power imbalance in the employment relationship. We encourage MBIE to ensure that information and advice services provided by both

¹³ www.mbie.govt.nz/info-services/business/business-growth-agenda/sectors-reports-series/the-small-business-sector-report-and-factsheet.

government and non-governmental organisations are adequately resourced and promoted. We recommend that given the high proportion of employees under the age of 30 years who are without an employment agreement, MBIE considers targeted education for young people about their employment rights.

Make it easier to report a breach

When an employee is denied their minimum employment entitlements, they should be able to raise their concerns without fear of repercussions. Ideally an employee should be able to take the issue to their employer; however our enquiries show us that attempting to assert your rights as an employee can have negative results, even to the extent of having your employment terminated. An employee may have a basis for bringing a personal grievance but given the vulnerable position the employee is in, this may not be a course of action they are willing to pursue.

We recommend that options be explored for making it easier for employees (and third parties) to report an employer's non-compliance with the law to the government's employment regulator, anonymously if they wish, and with protection from any negative consequences of holding their employer to account. Information on the Employment New Zealand website largely buries the option of reporting a breach. The page about the Labour Inspectorate, the government's compliance and enforcement agency, fails to even provide contact details. There seems to be nothing that sends a message to employees that if you are experiencing an abuse of your employment rights, you can report this to the regulator. Of course, for reporting to be meaningful, there also needs to be some assurance that action will be taken.

Increase the capacity of the Labour Inspectorate

The Labour Inspectorate within MBIE has statutory powers for investigating breaches of minimum standards of employment and has the power to take action in response. From 1 April 2016 the powers of the Labour Inspectorate were strengthened with tougher sanctions and increased tools for enforcement. Recent media reports demonstrate that the Labour Inspectorate is taking action in relation to non-compliance; however the capacity of the Inspectorate continues to be insufficient to deal with the widespread problems of employment rights being ignored and abused.

The targeting of the Inspectorate's resource to specific sectors and industries allows many employers to blithely continue to operate outside the law. Employers need to know that if they don't comply with the law, there are consequences, regardless of which industry or sector the employer operates in. We recommend that the Labour Inspectorate should be resourced to a level that allows consistent action to be taken in response to clear breaches of employment law.

Identify 'good employers' through an accreditation system

Another avenue that could be explored is to incentivise good employment practice by providing greater transparency to consumers about employers' treatment of their workers. We suggest that this could be done by creating an accreditation system for businesses based on employers' adherence to minimum employment standards. This would allow employers to demonstrate that they respect the rights of their workers and provide consumers with information that may influence their spending decisions. A 'good employer' accreditation system could be an extension of existing schemes such as those that capture issues relating to waste minimisation, environmental sustainability, payment of the living wage and fair trade.

Conclusion

This report puts a spotlight on CAB clients who are without an employment agreement and highlights the related breaches of employment rights experienced by these individuals. While having a written employment agreement is not in itself a guarantee that other employment rights will be respected, we believe it is the foundational requirement that underlies a good faith employment relationship. A written employment agreement provides the necessary clarity and transparency about the agreed terms and conditions which in turn strengthens the enforcement of other employment rights.

We hope this report will prompt employers to review their employment relationships and ensure that every employee has a written employment agreement. We also hope this report will be a prompt for action across government, both to educate and upskill employers who are failing in their legal responsibilities because of ignorance or oversight, and to ensure there are consequences for those who knowingly deny their workers the minimum standards of employment required by the law. CAB will continue to support both employees and employers to access the information and assistance they need to understand and fulfil their rights and responsibilities, and will advocate for change in areas where these rights are being neglected or abused.