

The Chair
Cabinet Economic Growth and Infrastructure Committee

Strengthening enforcement of employment standards

Proposal

- 1 This paper seeks Cabinet approval to a comprehensive package of recommendations that will improve compliance with employment standards, including through stronger and more effective enforcement of these standards.

Executive summary

- 2 There is an unacceptable level of non-compliance with employment standards, such as employees being paid less than the minimum wage, not receiving annual holiday entitlements, and not having employment agreements. Seventeen per cent of respondents to Statistics New Zealand's Survey of Working Life (2012) reported that they were not receiving at least one of these minimum employment standards.
- 3 There are also growing concerns that breaches are becoming more serious, systemic and widespread (such as the increasing number of reports about exploitation of migrant workers).
- 4 The government consulted on a number of high-level options to improve the employment standards regulatory system in June 2014 through the discussion document *'Playing by the Rules – Strengthening Enforcement of Employment Standards'*.
- 5 There are several factors contributing to the low level of compliance with employment standards, including:
 - a. a lack of understanding by employers and employees of their rights and responsibilities
 - b. sanctions that are appropriate for most breaches but are not adequate to deter serious and systemic non-compliance
 - c. the ability for directors and other individuals to avoid accountability, including commonly winding up a company to avoid paying arrears when they are found to have breached employment standards
 - d. inconsistent and confusing requirements for keeping records (such as wages and time records) which makes it difficult for employers, employees and for the Labour Inspectorate to ensure standards are being met
 - e. an inability for labour inspectors to access sufficient information from employers and from other regulatory agencies to identify and investigate breaches of employment standards

- f. legislative settings and processes that are not appropriate for dealing with breaches of employment standards, in particular serious and/or intentional breaches, instead focusing on maintaining the employment relationship with mediation as the key dispute resolution process
 - g. resourcing constraints in the employment standards regulatory system has contributed to the system struggling to adequately respond to the pressures emerging at the more serious end (such as migrant exploitation) and at the less serious end (such as employers needing information and advice).
- 6 Non-compliance with employment standards impacts employees, compliant employers and the wider economy in a number of ways:
- a. compliant employers are undercut by the anti-competitive behaviour of non-compliant employers and put at a competitive disadvantage
 - b. it reduces confidence that the outcomes of employment will be better than being on a benefit (as the public has lower confidence that all employment will adhere to minimum standards)
 - c. the most vulnerable parts of our communities are also the most susceptible to breaches of standards. If these standards are not effectively understood and enforced, this can create incentives that drive down employment practices, exacerbating the difficulties faced by workers in those communities
 - d. it does not promote fair and productive employment relationships that lead to improved productivity across the economy, including better standards and income for workers
 - e. it damages New Zealand's international reputation as a place to work and do business.
- 7 To address this, I propose a comprehensive package of changes to improve compliance and enforcement of employment standards across the regulatory system, using both legislative and non-legislative measures.
- 8 In considering options, I have been conscious to ensure that employers that do maintain minimum employment standards are not subjected to further compliance costs as a result of the proposals in this paper. Key proposals are:
- a. new, stronger sanctions reserved for serious breaches dealt with by the Employment Court
 - b. enhancing the ability to hold persons other than the employer accountable for breaches
 - c. consistent and universal requirements on employers to keep compliant records and employment agreements in respect of each employee (ensuring employers have flexibility in how records are kept in order to reduce compliance costs)
 - d. providing for an infringement notice for a failure to keep or produce records or employment agreements

- e. enhanced powers for labour inspectors to request information from both employers (in the course of an investigation) and from other government agencies (to better target enforcement activity)
- f. better provision of information to employers and employees on their rights and obligations
- g. ensuring the legislative settings adequately distinguish employment standards issues from employment relationship problems to promote more effective enforcement of those standards, including overturning the statutory obligation for the Employment Relations Authority to direct standards cases to mediation
- h. increasing the number of labour inspectors in Auckland, where many of the more serious issues are seen (subject to funding sought as part of Budget 2015)
- i. a triage function that will enable the Labour Inspectorate to continue its current focus on more serious and systemic breaches
- j. s9(2)(f)(iv) of the Official Information Act 1982

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- 10 The proposals in this paper stand alone from the Budget bid, and are worthy of implementation regardless of the outcome in Budget 2015.

Next steps

- 11 I intend to progress these changes along with the changes to parental leave announced as part of Budget 2014 in an omnibus Employment Standards Bill. In order to achieve the 1 April 2016 implementation date for the parental leave changes, I will return to Cabinet with a Bill by mid-2015.
- 12 I will also return to Cabinet by May 2015 with proposals to address two issues that have been highlighted in the media recently, namely 'zero hours contracts' and wage deductions for loss or damage caused by third parties. I intend for any legislative changes that may arise to be included in the Employment Standards Bill.

Background

The nature and extent of the problem of non-compliance with employment standards

- 13 New Zealand's employment standards system imposes minimum obligations on employers and provides minimum entitlements for workers. It includes such standards as the requirements to pay at least the minimum wage and to provide four weeks' annual holidays. The system promotes a balance between work and other aspects of workers' lives, whilst providing certainty around the minimum cost of labour for businesses.
- 14 However, the current employment standards system does not provide sufficient or strong enough incentives or deterrents to ensure businesses are compliant and that workers receive their minimum entitlements.
- 15 As well as harming the wellbeing of the employees affected (through financial disadvantage and, in more serious cases, through impacts on mental and physical health), non-compliance with employment standards has potentially significant consequences for the New Zealand economy:
 - a. compliant employers are undercut by the anti-competitive behaviour of non-compliant employers and put at a competitive disadvantage
 - b. it reduces confidence that the outcomes of employment will be better than being on a benefit (as the public has lower confidence that all employment will adhere to minimum standards)
 - c. the most vulnerable parts of our communities are also the most susceptible to breaches of standards. If these standards are not effectively understood and enforced, this can create incentives that drive down employment practices, exacerbating the difficulties faced by workers in those communities
 - d. it does not promote fair and productive employment relationship that lead to improved productivity across the economy, including better standards and income for workers
 - e. it damages New Zealand's international reputation as a place to work and do business.
- 16 While comprehensive data on the nature and extent of the problem is not readily available, a picture of non-compliance (and its causes) has emerged from Ministry of Business, Innovation and Employment (MBIE) and Statistics New Zealand data, evidence from the Labour Inspectorate, case law from the Employment Relations Authority and Employment Court, other reports (in particular in relation to migrant exploitation) and the public consultation process.
- 17 For example, MBIE's annual National Survey of Employers 2013/14 indicated that 10 per cent of employers did not have written employment agreements for all their employees. Statistics New Zealand's Survey of Working Life (2012) showed that 17 per cent of employees reported not receiving one or more of the minimum entitlements asked about in the survey (minimum holiday entitlement, being paid at least the minimum wage and having an employment agreement).

- 18 In addition, the Labour Inspectorate is investigating a growing number of serious breaches of employment standards such as serious breaches involving migrants and other vulnerable groups and systemic breaches (where breaches are aggregated over a large number of employees). Migrant exploitation can involve significant underpayment of minimum entitlements, often accompanied by other hardships (such as sub-standard accommodation), and is particularly an issue in Auckland and the Canterbury rebuild.

The discussion document ‘Playing by the Rules’

- 19 On 9 June 2014, Cabinet agreed to the release of the discussion document ‘*Playing by the Rules – Strengthening Enforcement of Employment Standards*’ to seek views on a number of high-level options to address the issues identified above [CAB Min (14) 19/7 refers].
- 20 A total of 84 submissions were received from a range of individuals and organisations. There was strong agreement that current sanctions are not sufficient to deter serious breaches of employment standards and broad support for a range of extended sanctions, including naming and shaming, increased financial penalties, criminal sanctions (including imprisonment) and banning orders.
- 21 However, many submitters (in particular employers and employer associations) also made the point that it is important that sanctions are proportionate to the nature of the breach, and that the majority of employers who are willing to comply, but unintentionally breach standards, are better targeted with information and education; increased sanctions should be reserved for those employers who commit serious breaches of standards.
- 22 A number of submitters commented that the information available on the rights and obligations of employers and employees is inadequate and can be difficult to understand; and that the information needs to be more accessible, and distributed through a wider variety of channels, with a particular focus on ensuring that migrant workers receive better targeted information.
- 23 Submitters also raised concerns that the employment standards system is inadequately resourced, particularly in relation to the number of labour inspectors.

Defining ‘employment standards’

- 24 In this paper, the term ‘*employment standards*’ refers collectively to: minimum entitlements under the Minimum Wage Act 1983, Holidays Act 2003, Wages Protection Act 1983 and Equal Pay Act 1972; the requirements to keep wages and time and holiday and leave records under the employment legislation; and the provisions in the Employment Relations Act 2000 relating to the requirements to keep individual employment agreements (s64), rest and meal breaks and breastfeeding breaks.

Proposals to strengthen enforcement of employment standards

Ensuring a broad range of sanctions, with stronger sanctions reserved for serious breaches

Providing that serious breaches can be taken direct to the Employment Court which will have a range of stronger sanctions

- 25 The penalties that can currently be awarded (\$10,000 for an individual, \$20,000 for a corporation) are not sufficient to deter the more serious breaches of employees' minimum entitlements and are significantly less than those available under the Immigration Act 2009 in respect of exploitation committed by employers (\$100,000 or seven years' imprisonment).
- 26 I therefore propose that serious breaches of minimum entitlements under the Minimum Wage, Holidays and Wages Protection Acts attract the following maximum pecuniary penalties:
- a. \$50,000 for an individual, and
 - b. for a body corporate, the greater of \$100,000 or three times the financial gain.
- 27 To provide for a principled and streamlined process for addressing serious breaches, I propose that these higher pecuniary penalties are only available:
- a. at the Employment Court (the Court) on application by a labour inspector, and
 - b. when a breach is 'serious' because of factors such as the amount of money involved, the number of individual instances of the breach and the time over which they occurred, the vulnerability of the employee(s) and the intent of the employer.
- 28 The Court would also be able to make the following orders in serious breach cases:
- a. compensatory orders to compensate an aggrieved person for loss or damage resulting from breaches of employment standards
 - b. compliance orders permitting the Court to require the person in contravention to undertake any action or cease any activity in order to prevent future non-compliance with the relevant provision.
- 29 Employers who continually and intentionally breach employment standards create risk for employees, the wider labour market and New Zealand's international reputation. I propose to provide the Court with the authority, on application by a labour inspector, to issue an order banning an individual from directly or indirectly (eg through involvement in the management of a company) entering into an employment agreement as an employer for a period up to a maximum of 10 years either:
- a. if a pecuniary penalty order has been made against that individual, or

- b. if that individual has persistently contravened employment standards provisions (for example, if an employer has repeatedly been sanctioned at the Authority, indicating a wilful disregard for meeting employment standards obligations), or
 - c. if that individual has been convicted of an offence under s351 of the Immigration Act 2009.
- 30 Contravening a banning order would be an offence punishable by a maximum fine of \$200,000 and/or imprisonment of up to three years. These provisions are similar to banning orders in other legislation, such as the Companies Act 1993 (though this has a maximum five year term) and the Financial Markets Conduct Act 2013, the main difference being that the ban is specifically related to the employment of employees.
- 31 The Court of Appeal currently only hears appeals relating to employment matters on points of law. In order to ensure that employers against whom pecuniary penalty and other orders are applied have adequate appeal rights, I propose that the Court of Appeal be empowered to hear appeals in relation to these as if they were decisions of the High Court.
- 32 In addition I propose that:
 - a. the usual civil standard should apply to proceedings for pecuniary penalties, compensation orders, compliance orders and management banning orders
 - b. appropriate defences against liability be included and that, where appropriate, these also apply to persons involved in a contravention (see paragraph 44)
 - c. where appropriate, provisions are included that enable the court to impute the state of mind or conduct of a body corporate or other person from the state of mind or conduct of directors, employees or agents
 - d. legislation sets out criteria to assist the Court in determining what level of pecuniary penalty to impose (such as the nature and extent of the breach, loss/damage caused by the breach, the vulnerability of the employee and whether the breach was intentional, inadvertent or negligent)
 - e. a defendant should not be able to obtain insurance or indemnity to protect them from liability for these breaches
 - f. while persons will not be excused from answering labour inspectors' questions on the grounds that to do so might expose them to a pecuniary penalty, any such statements shall not be admissible in pecuniary penalty proceedings.

- 33 It is likely that unions and other worker representatives will question why they cannot support employees in taking proceedings for serious breaches without a labour inspector. Currently, both inspectors and employees can take cases in many instances. However, pecuniary penalties are of a different nature to the existing penalties in the Employment Relations Authority (the Authority). They are more substantial and used in circumstances where there is a recognised state interest in punishing law-breaking conduct. In this way they have much in common with criminal offences and it is therefore appropriate that only the state should seek them. This also aligns with the recent recommendations of the Law Commission on pecuniary penalties.
- 34 In addition, only labour inspectors, as the enforcement arm of the regulator, have statutory powers for investigating breaches and these powers will be particularly important in serious breach cases as the Court will require persuasive evidence before awarding the significant pecuniary penalties available. Unions and other worker representatives would be expected to alert the Inspectorate to possible serious breaches of standards.
- 35 It should also be noted that nothing in these proposals prevents the worker from seeking compensation for the breach, however serious, at the Authority; it is only an action for the pecuniary penalties that would be unavailable.

Penalty levels at the Employment Relations Authority remain the same but consistency enhanced

- 36 The current penalties of \$10,000 for an individual and \$20,000 for a company or other corporation are sufficient for all except for the most serious breaches of employment standards. I therefore propose that the available penalties at the Employment Relations Authority (the Authority) are not increased. However I am concerned that there is variability in the level of penalty applied in similar cases.
- 37 To ensure greater consistency in penalty awards, I propose that provisions be made in the legislation setting out a range of criteria that must be considered when determining the level of such an award. These would largely mirror the criteria for pecuniary penalties at the Court, examples of which are indicated in paragraph 32(d).

Who can seek penalties for breaches of standards at the Employment Relations Authority?

- 38 Employees are already able to seek penalties for a number of breaches of the Employment Relations Act, including some minimum entitlements breaches (those under the Wages Protection Act). For other minimum entitlement breaches, penalties can only be sought by a labour inspector.
- 39 I propose that the ability for employees to seek penalties at the Authority is extended to cover all breaches of minimum entitlements under the Minimum Wage Act and Holidays Act. This is consistent with other penalty provisions in the Employment Relations Act and, with the Labour Inspectorate refocussing on more serious breaches, will ensure that employers who breach standards can still face sanction, providing additional incentives for compliance through increased deterrence.

- 40 The penalties awarded by the Authority are usually payable to the Crown, but the Authority has the discretion to award a portion to the employee(s) concerned whether the case is taken by an employee or a labour inspector.

Naming non-compliant employers

- 41 I propose that a policy to name employers who have been found to have breached employment standards at either the Authority or the Court is put in place to deter non-compliance in employers who value their reputation as a good employer. While this information is already publically available, this naming policy will collate and make more easily accessible the names of employers who have breached employment standards. Providing this information in an easily accessible form will also enable potential employees to be better informed about their potential employer's history regarding the provision of employment entitlements. Other regulators make use of similar sanctions (for example, the Financial Markets Authority and the Office of the Privacy Commissioner).

Increasing the accountability of directors and other persons

- 42 It is well recognised that deterrence is enhanced if individuals who aid and abet law-breaking can also be held accountable. When that law-breaking relates to the actions of a corporate entity, increasing individual accountability can also promote corporate compliance. There are currently only limited provisions in the Employment Relations Act that permit actions to be taken against a director or other individuals: under section 234, labour inspectors can (with the Authority's approval) seek arrears under the Minimum Wage and Holidays Acts from certain individuals when a company either has insufficient assets or is in liquidation or receivership (if the original case was commenced before those proceedings started).
- 43 I propose that accessorial liability provisions be introduced into the employment legislation to hold persons other than the employer to account if they are found to be knowingly involved in a breach of employment standards. These provisions are found in the Australian employment legislation – the Fair Work Act 2009 – and in a number of pieces of New Zealand legislation, most recently the Financial Markets Conduct Act 2013.
- 44 Under these provisions a person would be found to be 'involved in a contravention' of an employment standards provision, and would therefore be taken to have contravened that provision, if the person:
- a. has aided, abetted, counselled, or procured the contravention; or
 - b. has induced, whether by threats or promises or otherwise, the contravention; or
 - c. has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - d. has conspired with others to effect the contravention.

- 45 Such provisions may give rise to concerns that a wide range of individuals could be unwittingly caught by these provisions (such as individuals providing legal advice) or that they might have a chilling effect on individuals wishing to start up and/or run companies (and similar concerns were raised in relation to these provisions in the Financial Markets Conduct Act 2013). I consider that these concerns are unfounded. The case law in New Zealand and Australia demonstrates that intentional participation in the primary contravention and knowledge of all the facts essential to the contravention is required for accessory liability; innocent or even negligent participation is not sufficient for liability to be found. Good communication about the provisions, and how they are used in other regimes and jurisdictions, will help allay any concerns of stakeholders.
- 46 However, I recognise that lower level employees of the employer may nonetheless feel concerned that they could be caught by these provisions. I therefore propose that, in the case of the corporate employer, these provisions are limited to 'officers' of the company, the intent being to only capture directors and other individuals who occupy positions that exercise significant influence over the management or administration of the whole, or a substantial part, of the business.
- 47 I propose that, while only inspectors will be able to take accessory cases direct to the Court in the case of a serious breach, both inspectors and employees can take cases against accessories at the Authority. In order to guard against excessive and/or vexatious claims, I propose that employees cannot seek penalties against accessories – only monies owing – and must first seek the leave of the Authority to take a case against an accessory.

Improving the clarity and consistency of record-keeping requirements

- 48 Record-keeping requirements are currently spread across the employment legislation and are, in some places, inconsistent. Furthermore, they do not ensure that, in all circumstances, compliance with minimum entitlements can be determined. For example, the lack of a requirement to record the hours worked each day in a pay period for every employee makes assessing compliance with the Holidays and Minimum Wage Acts difficult in some circumstances.
- 49 I propose that current provisions be amended so that it is a universal and simple requirement that all employers have a record of the number of hours worked each day in a pay period, and the pay for those hours, for all employees. The form this information is kept in would be flexible, the main requirement being that employers would produce this information in an easily accessible form on request from the employee or from a labour inspector.
- 50 For many employers, this requirement will be easy to meet with no additional compliance burden. Where employees work regular, contracted hours a simple statement of those hours and the days on which they fall will suffice. It is only when employees' hours vary from day to day and from pay period to pay period, or when there is a significant departure from contracted hours, that specific records of the actual hours worked would need to be kept. In these cases, this information is already necessary in order for the employer to know how to calculate minimum entitlements, and for the employee or the labour inspectorate to determine whether they have received minimum entitlements, so should not be an additional impost if they are complying with the law.

- 51 It is the employer's responsibility to be able to demonstrate compliance with minimum entitlements and I recommend that this responsibility is explicitly reflected in the primary legislation. In situations in which the level of detail necessary to record is unclear, employers will be guided by this principle.

Infringement notices for not producing records and employment agreements

- 52 The lack of wages and time, or holiday and leave, records, or a signed copy of an employee's individual employment agreement are often an indicator that minimum entitlements have been breached, and also significantly hamper the ability of a labour inspector to efficiently conduct an investigation.
- 53 While employers are liable to penalties at the Employment Relations Authority for failing to meet these requirements and the Authority can take an employee's word in relation to claims if the employer does not have sufficient records, these do not provide the deterrent required. More immediate incentives to keep records and have employment agreements as a matter of course are needed.
- 54 I therefore propose that infringement offences be introduced for clear-cut breaches of the obligations to keep employment agreements and the prescribed records and produce them at the request of a labour inspector. In line with Ministry of Justice guidelines, I propose that the maximum infringement fee be set at \$1,000 for each individual breach. For breaches involving several employees, this could potentially result in quite significant infringement fees, providing a strong incentive to comply with these requirements. However, as the potential exists for these breaches to apply to a large number of employees, I propose that the maximum cumulative infringement fee that could be imposed in any one instance be capped at \$20,000.
- 55 Infringement offences are a common feature of sanctions regimes and provide an additional tool to enable regulators to respond more flexibly to non-compliance. As a regulator, MBIE already administers a number of other infringement regimes (for example, the Registrar of Companies can issue infringement notices for failing to register financial statements). They are an efficient response to lower-level, clear-cut breaches as they reduce the need for proceedings at a tribunal or court. The Fair Work Ombudsman in Australia considers that infringement offences in their legislation have contributed to increased compliance with record-keeping requirements.
- 56 Additionally I propose that the penalty provisions are enhanced to improve consistency and increase incentives for compliance with these requirements. Currently:
- a. an inspector can seek a penalty at the Authority for a failure to keep holiday and leave records, but not for wages and time records; whereas an employee can seek a penalty for a failure to keep wages and time records but not for holiday and leave records
 - b. an inspector can seek a penalty for a failure to keep a signed copy of an employment agreement, but not the employee.

- 57 I propose that both inspectors and employees can seek penalties at the Authority for failure to keep the prescribed records. I also propose that an employee can seek a penalty for the employer's failure to keep a copy of his or her employment agreement.

Extending the powers of labour inspectors to access information

- 58 Currently, labour inspectors only have the power to request wages and time, and holiday and leave records and “any other document held which records the remuneration of any employees” (s229 Employment Relations Act). However, there are a number of other documents that could provide evidence to assist with assessing non-compliance and these are especially important when, for example, the wages and time records are non-existent or incomplete. The ability to request, for example, financial records, bank statements, current contracts to supply goods and/or services, and PAYE records from employers could provide important supporting evidence concerning an alleged breach.
- 59 I propose that labour inspectors be empowered to request any document or record that they have a reasonable belief will assist in determining whether or not a breach of an employee's minimum entitlements has occurred.
- 60 Extending labour inspectors' ability to access information from employers fits with the powers for health and safety inspectors under the Health and Safety Reform Bill currently before select committee. It also aligns with the approaches taken by the United Kingdom and Australia.

Improving labour inspector information sharing with other regulators

- 61 Other regulatory agencies (for instance Immigration New Zealand (INZ), Inland Revenue (IRD) and WorkSafe New Zealand) hold information that can assist labour inspectors in identifying, investigating and enforcing breaches of employment standards. However, labour inspectors are not able to routinely obtain information from others (outside of a labour inspector's investigation) unless the disclosure is authorised under the exceptions to the Information Privacy Principles (IPPs) in the Privacy Act 1993. Other regulators are unable to share information with labour inspectors for the purpose of achieving better enforcement of employment legislation if this is not the purpose for which the information was collected and the disclosure does not fit with one of the exceptions to IPP 11 (the principle limiting the disclosure of personal information).
- 62 Labour inspectors also have difficulty passing on information efficiently to others for their enforcement purposes. Section 233(5) of the Employment Relations Act prohibits labour inspectors from disclosing any information that they obtain as a result of inspecting documents (or being supplied with copies of documents) in the course of exercising their powers under the Act, except for the purposes of the employment legislation.¹

¹ Section 233(5): Except for the purposes of an Act specified in section 223(1), any Labour Inspector who inspects, or is supplied with a copy of, any document pursuant to section 229 must not disclose to any person any information obtained as a result of the inspection of the document or the supply of the copy.

- 63 I propose amending section 233(5) so that it allows for some sharing of information both ways between labour inspectors and other regulatory agencies. This would provide clarity to inspectors that they can obtain the information they need from others to assist with identifying and investigating breaches, and that they can pass on information they obtain to assist other regulators. Information shared would remain subject to the Privacy Act. Where an Approved Information Sharing Agreement (AISA) is established this may modify or override the Privacy Act's information privacy principles, allowing for specific personal information to be used or disclosed.

Specific agreements to share information to be developed

- 64 Following this legislative change I intend that a series of Memoranda of Understanding (MOUs) and Approved Information Sharing Agreements (AISAs) be put in place to facilitate the sharing of information between labour inspectors and other relevant regulators, including INZ, IRD, Worksafe and the Companies Office.
- 65 There is some risk that extending the powers of labour inspectors to access information (in particular business information) as well as improving the ability of labour inspectors to share information with other agencies, results in unintended or inappropriate sharing of business or personal information. This risk will be managed in the development of MOUs and AISAs, which will provide the necessary checks and balances for how labour inspectors and other regulatory parties with whom they share information are required to handle both business and personal information.
- 66 MOUs will not allow for the sharing of personal information that is contrary to the Privacy Act provisions, but will provide transparency and clarity for information sharing arrangements. The use of an AISA has the advantage of allowing the sharing of personal information when this might be contrary to the provisions of the Privacy Act. The purpose of an AISA is to enable the sharing of personal information to facilitate the provision of a public service specified in the agreement.
- 67 The process of developing an AISA (including developing a privacy impact report and authorising it by Order in Council) provides adequate safeguards in relation to any sharing of personal information. The Office of the Privacy Commissioner is supportive of the approach of using AISAs in the employment standards context and will work with MBIE on their development.

Improving the provision of information to employers and employees

- 68 Most employers attempt to comply with employment standards. However there appears to be a large number of low level breaches that occur because of a lack of understanding of the requirements, or how to apply them in specific circumstances (for instance there are significant complexities in applying Holidays Act provisions where employees work variable hours). Failure to provide sufficient support for the employers wanting to comply with the law will result in increased incidences of non-intentional non-compliance and will inevitably push parties to the more prosecutorial and expensive parts of the system.
- 69 Submissions to the *Playing by the Rules* discussion document highlighted deficiencies in the way employers and employees are supported to understand their rights and responsibilities, leading to problems with compliance. In particular:

- a. information about compliance with the law is hard to find and much of the information that is accessible is out of date and not of high quality
 - b. information is not targeted or accessible to areas of highest need, for instance migrants and high risk sectors.
- 70 Providing accessible and useful basic information and advice to employers and employees includes ensuring that:
- a. the information that the government provides about employment law on its website is fit-for-purpose, up-to-date and accessible
 - b. sufficient detailed guidance is provided around areas of law which require more support (for example, payroll, dismissals, drugs and alcohol testing are all areas where business and employees have said more guidance and support would be useful)
 - c. there are sufficient education and information campaigns when new laws are developed so people understand the changes and how to comply
 - d. there is practical guidance to users of the employment system about how they can interact with the various arms of the system – such as the enforcement and dispute resolution arms of the system
 - e. MBIE works with third parties to promote compliance. This may include working with sectoral bodies to support operationalisation of standards in particular high risk sectors (eg. dairy and horticulture).
- 71 This work is currently unfunded and would cost approximately \$2m per year on an ongoing basis. Funding for this is included in the 2015 Budget bid.

Improving the legislative settings and processes for dealing with breaches of employment standards

Amending the object of the Employment Relations Act

- 72 The need for effective enforcement of employment standards, particularly in relation to serious breaches, is not adequately recognised in the Employment Relations Act. The object of the Employment Relations Act (in section 3) only refers to building “productive employment relationships through the promotion of good faith” and makes no mention of enforcement of employment standards. In particular the object promotes “mediation as the primary problem-solving mechanism” and “reducing the need for judicial intervention”.
- 73 These provisions are entirely appropriate for employment relationship issues that have the relationship between the employer and employee at their core. However, they are not necessarily appropriate for employment standards breaches, particularly those that are serious and intentional, and that may have serious impacts on the employee, or wider impacts on New Zealand's international reputation. For example, mediation is not an appropriate mechanism for addressing a serious employment standards breach, where the breach was deliberate and may have also affected other employees that are not part of the mediation process.

- 74 To reflect the intent of, and effectively support, this package of amendments, I recommend that a new object is added that reflects the importance of the need for effective enforcement of employment standards.

Providing for high-level functions of the employment relations/employment standards system

- 75 The legislation currently provides that certain functions relating to the employment relations/employment standards system are carried out by mediation services and labour inspectors. For example, both potentially have responsibilities relating to the provision of information to employers and employees. It would be preferable for the high-level functions of the system to be attributed to the regulator, ie MBIE, rather than specific components of the system so that it is clear that these are MBIE's responsibility.
- 76 I therefore propose that amendments are made to the Employment Relations Act attributing key functions to MBIE that reflect MBIE's role in:
- a. providing advice and information to employees and employers about the regulatory system to encourage compliance
 - b. supporting effective resolution of employment relationship problems by providing appropriate dispute resolution services
 - c. upholding employment standards through robust and timely enforcement action.

Amending the functions of labour inspectors

- 77 In light of the above proposal to list the high-level functions of the regulator, I propose that the functions of labour inspectors currently listed in the Employment Relations Act be amended as these functions do not adequately emphasise that the principal role of the Labour Inspectorate is enforcement.² In particular, these amendments would better reflect the role of labour inspectors in:
- a. monitoring and enforcing compliance with employment standards
 - b. publishing reports and guidelines, or making comments, about any matter relating to enforcement of employment standards
 - c. working with other regulatory bodies, including by sharing information.

² The current functions include:

- determining whether the provisions of the relevant Acts have been complied with
- taking all reasonable steps to ensure that the relevant Acts are complied with
- supporting employers, employees, and other persons in complying with the relevant Acts by providing information and education
- preventing non-compliance with the relevant Acts by assisting employers to implement systems and practices that comply with the provisions of the relevant Acts
- providing any other services that assist employers and employees to resolve, promptly and effectively, employment relationship problems arising under the relevant Acts.

The role of mediation in employment standards breaches

- 78 The Employment Relations Act promotes mediation as the primary dispute resolution mechanism. When a dispute comes before the Authority, the Authority is required to direct that mediation take place before investigating the matter unless it considers that certain exceptions are met.
- 79 Mediation provides a low-cost, timely and appropriate pathway to resolve most employment relationship problems between employers and employees. However, I consider mediation to be an inappropriate tool for many employment standards cases, in particular cases involving more serious, systemic and/or intentional breaches of minimum employment standards. These cases affect not only the employee(s) concerned but also compliant employers and the wider economy. They require effective sanctions in order to punish the non-compliant employer and deter future non-compliance; outcomes that are not achieved through the confidential mediation process.
- 80 I propose that the statutory obligation on the Authority to direct employment standards cases to mediation be overturned. Instead the intent will be for cases that substantially involve alleged breaches of employment standards to be addressed at the Authority (or the Court in the case of serious cases taken by a labour inspector).
- 81 The Authority would retain the discretion to direct employment standards cases to mediation in circumstances such as:
- a. the facts of the alleged breach are not clear and the Authority considers that mediation will provide a lower cost and more timely pathway to clarifying the facts, or
 - b. the alleged breach appears to be minor (in terms of, for example, dollar value, number of instances and the period over which these instances occurred) and inadvertent, or
 - c. both parties agree that mediation would assist in resolving the issue.
- 82 I note that the Employment Relations Authority opposes any changes to the statutory obligation to direct employment standards cases to mediation. The Authority considers that the current exceptions to this obligation are adequate.
- 83 I propose clear communication that this change will not affect cases involving employment relationship issues, and outlining why mediation is not appropriate for many employment standards breaches, in order to respond to stakeholder concerns. I also note that many submitters to the *Playing by the Rules* discussion document considered that cases dealing primarily with employment standards issues could be better addressed at the Authority.

Increasing the number of labour inspectors in Auckland

84 The Inspectorate is not currently resourced to address the incidence and scale of the serious and systemic breaches being seen in Auckland. The Inspectorate has nine inspectors based in Auckland, fewer than the number in Christchurch (which has ten inspectors following the boost in numbers to ensure there was an adequate response for the Canterbury re-build). It has been estimated that it would require hiring six new inspectors to effectively address the scale of the breaches being seen in Auckland, along with the necessary infrastructure (such as the relevant business intelligence functions) to support those inspectors. This would come at a total cost of approximately \$1.7m per annum and funding for this is included in the 2015 Budget bid.

A triage function for employment standards breaches

85 A national triaging system has been trialled in the Service Centre at MBIE to separate serious and systemic issues from other complaints. Serious and systemic issues are forwarded to the Labour Inspectorate and outbound calling capability has been established in the Service Centre to assist with the swift and informal resolution of the remaining complaints. Addressing low level breaches is an important function of the system as it allows the system as a whole to be seen as effective.

86 The Service Centre, however, is not funded to do this on an ongoing basis and this is currently putting pressure on the Service Centre's ability to service other calls. Putting the triaging function in place on a permanent basis would enable the Inspectorate to continue its current activities, rather than return to being more reactive and focussed on lower level breaches. This would cost approximately \$0.5m per annum and is included in the 2015 Budget bid.

A number of smaller legislative changes are also recommended

87 In addition to the key proposals described above, I recommend a number of other smaller amendments to the legislation relating to the sanctions regime. These are set out in the following table.

Proposed amendment	Rationale
Provide that the Court has discretion to award a portion of the fine for failure to comply with a compliance order to the aggrieved employee.	Penalties in the Employment Relations Act can be awarded to the employee at the Authority's (or Court's) discretion. I recommend that the same applies to the Court's fine (for failure to comply with a compliance order) to compensate for previous failures to secure the monies owed by the employer.
Remove the requirement that a compliance order for failure to comply with an Authority determination is necessary before the matter can go before the Court.	This step is unnecessary and simply delays proceedings. If an employer has failed to comply with an Authority determination, the party should be able to take the matter straight to the Court.
Permit the Crown to seek compliance at the Court with any Authority determination that awards it a penalty.	If a penalty is awarded to the Crown at the Authority in a case in which a labour inspector is not involved, it is difficult for the Crown to seek compliance with that penalty award at the Court as it is not a party to the original proceedings.

Permit inspectors to seek monies owed as a result of illegal deductions under the Wages Protection Act.	While inspectors can seek arrears on behalf of employees in the other pieces of employment legislation, an inspector cannot seek monies owed as a result of illegal deductions under the Wages Protection Act.
Provide that the fines awarded by the Court for failure to comply with a compliance order can be enforced under the Summary Proceedings Act 1957.	The Ministry of Justice advises that these fines can be enforced in this way, but recommends that this be made clear in the legislation.

Options consulted on but not progressed

88 There are a number of high-level options that were consulted on in the *Playing by the Rules* discussion document that I have decided not to progress. The following table briefly summarises these.

Option	Reason(s) for not progressing
Introducing criminal sanctions for serious breaches of employment standards.	While this would be consistent with the criminal sanctions for exploitation in the Immigration Act, there are a number of reasons not to progress this option, including: <ul style="list-style-type: none"> • there are complexities in clearly defining the criminal/civil threshold, and it would create operational difficulties in determining which path to take at the beginning of an investigation • the Labour Inspectorate is not currently able to implement the necessary changes to conduct criminal investigations, and would require significant additional resources to build capability and carry out criminal investigations.
Extending the powers of labour inspectors to access information, eg through obtaining search warrants.	This might be appropriate if criminal sanctions were introduced but is not necessary for a civil regime.
Extending the powers of labour inspectors to make binding determinations, eg in relation to employment status.	Making determinations on employment status is a complex matter and there is no obvious gain from this option. Inspectors often have to make these kinds of determinations informally in the course of their investigations (to determine if entitlements are owing) and this can be challenged at the Authority.
Permitting mediators to raise concerns about serious breaches of employment standards.	Submitters were very concerned that this would damage the integrity of mediation. Also, the proposals for restricting standards cases going to mediation will reduce the likelihood that more serious cases will end up there.
Fast-tracking minor breaches through a separate system or process so that 'small claims' can be dealt with quickly and easily.	This would be costly to implement and the issue is best remedied by ensuring that breaches are addressed appropriately within the system. The Authority already has the power to hear cases on the papers should it so choose.

Funding of the employment relations and standards system

89 Ensuring that the employment standards system is adequately funded is critical to a compliant labour market.

s9(2)(f)(iv) of the Official Information Act 1982

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Other matters

103 I am also undertaking some work on two issues that have featured in the media in recent months: the prevalence of 'zero-hour contracts' in New Zealand and deductions being made from employees' wages for loss or damage caused by third parties.

Zero hour contracts

104 In December 2014 there were a series of media stories run by Radio New Zealand about the issue of arrangements being labelled 'zero hours contracts'. The term comes from the UK and is intended to refer to employment arrangements that are 'as and when required', similar to casual employment arrangements in New Zealand.

105 Casual work has always existed, and involves legitimate and important flexible arrangements that often benefit both employers and employees. However, in some instances the respective obligations of employers and employees in these arrangements are not mutual. In particular, I am concerned about:

- a. agreements unnecessarily restricting lower-skilled workers from undertaking alternative employment; and
- b. certain rostering practices, including short notice cancellation of shifts.

106 MBIE officials have been talking to stakeholders (including unions and industry groups) about these (and other) issues that they are seeing with casual employment agreements.

Deductions from wages for loss or damage

107 Around the same time, a number of stories in the media covered deductions being made from the wages of some employees at petrol stations and supermarkets to reimburse the employer for loss or damage caused by third parties. For example, employees were having their wages deducted to cover the costs when cars drive off without paying for petrol. These deductions are made under general consent

clauses in employment agreements which are reliant on section 5 of the Wages Protection Act 1983 (which permits deductions from wages either with the employee's consent or at the written request of the employee).

- 108 I am concerned that these clauses in employment agreements do not provide adequate protections for employees and my officials have been undertaking some preliminary analysis to address this issue.

Report back to Cabinet on these issues

- 109 I have instructed my officials to continue investigating these issues, including consultation with stakeholders on options to address them, and report back to me about whether any legislative intervention is warranted. I will report back to Cabinet with my findings and proposed response by May 2015. I intend for any legislative changes that may arise to be included in the Employment Standards Bill.

Next steps

- 110 I intend to present an omnibus Bill covering the employment standards reforms and the changes to parental leave announced as part of Budget 2014 to Cabinet in mid-2015 for introduction shortly thereafter. I will also be seeking approval for the increase in the Employment Relations Services appropriation as part of Budget 2015.

Consultation

- 111 The following government agencies have been consulted: ACC, the State Services Commission, the Treasury, the Ministries of Social Development, Education, Pacific Island Affairs, Justice, the Ministry for Women, Te Puni Kōkiri, Inland Revenue, the Department of Corrections, the Department of Internal Affairs and WorkSafe New Zealand. The Department of Prime Minister and Cabinet has been informed about the Cabinet paper. Business New Zealand, the New Zealand Council of Trade Unions, the Office of the Privacy Commissioner, the Employment Relations Authority and the Employment Court have also been consulted in the development of this Cabinet paper.

Financial implications

- 112 A budget bid has been included in Budget 2015 to seek approval for an increase of \$8.8 million per annum in baseline funding for the Employment Relations Service Appropriation in Vote Labour. This will be used to address the current deficit in the appropriation and invest in the suite of initiatives needed to improve the performance of the system.
- 113 However, the proposals in this paper stand alone from this process, and in my view are appropriate measures to improve minimum employment standards in the labour market, regardless of the outcome of the Budget Process.

Human rights

- 114 The proposals contained in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view

as to whether the proposals are consistent with the Bill of Rights Act will be possible once the proposed legislation has been drafted.

Legislative implications

- 115 The proposals in this paper will require amendments to a number of pieces of employment legislation, including the Employment Relations Act 2000, and a consequential amendment to the Tax Administration Act 1994. [REDACTED] s 9(2)(g)(i) of the Official Information Act 1982 [REDACTED] I intend to progress the changes to parental leave announced as part of Budget 2014 in the same Bill. In order to achieve the 1 April 2016 implementation date for the parental leave changes, the Bill needs to be introduced by mid-2015.

Regulatory impact analysis

- 116 A regulatory impact statement (RIS) is required for these changes and this is provided with the Cabinet paper. The RIS was not required to be reviewed by Treasury's Regulatory Impact Analysis Team but has been circulated to the Treasury as part of the consultation on this Cabinet paper.

Quality of Impact Analysis

- 117 The General Manager, Strategic Policy Branch, and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the regulatory impact statement prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Publicity

- 118 I intend to make a media statement on the decisions regarding strengthening the enforcement of employment standards at the appropriate time.

Recommendations

119 The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **Note** that in June 2014, Cabinet agreed to the release of the discussion document *Playing by the rules: strengthening enforcement of employment standards* to invite views on a number of high-level options to improve compliance with employment standards, with a particular focus on strengthening enforcement of serious breaches
- 2 **Note** that the term 'employment standards' refers collectively to minimum entitlements under the Minimum Wage Act 1983, Holidays Act 2003, Wages Protection Act 1983 and Equal Pay Act 1972; the requirements to keep wages and time and holiday and leave records under the employment legislation; and the provisions in the Employment Relations Act 2000 relating to the requirements to keep individual employment agreements (s64), rest and meal breaks and breastfeeding breaks

Ensuring a broad range of sanctions, with stronger sanctions reserved for serious breaches

Serious breaches considered at the Employment Court

- 3 **Agree** that labour inspectors can apply direct to the Employment Court for consideration of serious breaches of minimum entitlements under the Minimum Wage Act 1983, Holidays Act 2003 and Wages Protection Act 1983
- 4 **Agree** that, in relation serious breaches of those entitlements referred to in recommendation 3, the Employment Court has the power to award:
 - 4.1 pecuniary penalty orders up to:
 - 4.1.1 \$50,000 for an individual, and
 - 4.1.2 for a body corporate, the greater of \$100,000 or three times the financial gain
 - 4.2 compensatory orders for loss or damage
 - 4.3 compliance orders permitting the Court to require the person in contravention to undertake any action or cease any activity in order to prevent future non-compliance of the relevant provision
- 5 **Agree** that the Employment Court can, on application of a labour inspector, order an individual to be banned from directly or indirectly (eg through involvement in the management of a company) entering into an employment agreement as an employer for a maximum period of 10 years:
 - 5.1 if a pecuniary penalty has been awarded against them, or
 - 5.2 for persistent breaches of employment standards, or

- 5.3 if that individual has been convicted of an offence under s351 of the Immigration Act 2009
- 6 **Agree** that an offence of contravening a banning order be introduced with a maximum fine of \$200,000 and/or three years' imprisonment
- 7 **Agree** that:
- 7.1 the usual civil standard should apply to proceedings for pecuniary penalties, compensation orders, compliance orders and management banning orders
 - 7.2 appropriate defences against liability will be included and that, where appropriate, these also apply to persons involved in a contravention (refer recommendation 13)
 - 7.3 where appropriate, provisions are included that enable the court to impute the state of mind or conduct of a body corporate or other person from the state of mind or conduct of directors, employees or agents
 - 7.4 legislation sets out criteria to assist courts in determining what level of pecuniary penalty to impose
 - 7.5 a defendant should not be able to obtain insurance or indemnity to protect them from liability for these breaches
 - 7.6 while persons will not be excused from answering labour inspectors' questions on the grounds that to do so might expose them to a pecuniary penalty, any such statements shall not be admissible in pecuniary penalty proceedings
- 8 **Agree** that the Court of Appeal can hear appeals to the orders described in recommendations 4 and 5 as if they were decisions of the High Court

Penalties at the Employment Relations Authority

- 9 **Agree** that the maximum penalties available to the Employment Relations Authority remain the same
- 10 **Agree** that criteria for consideration by the Employment Relations Authority when awarding penalties are introduced to improve the consistency of penalty awards
- 11 **Agree** that, in addition to minimum entitlements under the Wages Protection Act 1983, employees can seek penalties at the Employment Relations Authority for breaches of minimum entitlements under the Minimum Wage Act 1983 and Holidays Act 2003

Naming policy

- 12 **Note** that a naming policy will be introduced to enable the collation and publication of the names of employers found to have breached employment standards by the Employment Relations Authority or the Court

Increasing the accountability of directors and other persons

- 13 **Agree** that accessorial liability provisions are introduced under which a person would be found to be 'involved in a contravention' of the employment standards provisions, and would therefore be taken to have contravened those provisions, if the person:
 - 13.1 has aided, abetted, counselled, or procured the contravention; or
 - 13.2 has induced, whether by threats or promises or otherwise, the contravention; or
 - 13.3 has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - 13.4 has conspired with others to effect the contravention
- 14 **Agree** that, in the case of the corporate employer, the accessorial liability provisions in recommendation 13 are limited to 'officers' of the company, the intent being to only capture directors and other individuals who occupy positions that exercise significant influence over the management or administration of the whole, or a substantial part, of the business
- 15 **Agree** that both labour inspectors and employees can take proceedings against accessories at the Employment Relations Authority but that, in order to guard against excessive and/or vexatious claims, employees:
 - 15.1 cannot seek penalties against accessories
 - 15.2 must first seek the leave of the Authority to take a case against an accessory

Improving the clarity and consistency of record-keeping requirements

- 16 **Agree** that employers are required to have a record of the hours worked each day in a pay period and the pay for those hours for all employees
- 17 **Agree** that the legislation makes it clear that the responsibility for ensuring that records are sufficient to demonstrate compliance with minimum entitlements rests with the employer

Providing the right incentives to keep records and employment agreements

- 18 **Agree** that infringement offences be introduced for clear-cut breaches of the obligations to:

- 18.1 keep a signed copy of an employee's individual employment agreement
- 18.2 keep the necessary records and provide these on request to a labour inspector
- 19 **Agree** that the maximum infringement fee for these infringement offences be \$1,000
- 20 **Agree** that, in any one instance, the maximum cumulative infringement fee that could be imposed be capped at \$20,000
- 21 **Agree** that both a labour inspector and an employee can seek a penalty at the Employment Relations Authority for an employer's failure to keep records
- 22 **Agree** that both a labour inspector and an employee can seek a penalty at the Employment Relations Authority for an employer's failure to keep a signed employment agreement in respect of that employee

Extending the powers of labour inspectors to access information

- 23 **Agree** that labour inspectors can request from an employer any document or record that they have a reasonable belief will assist in determining whether or not a breach of an employee's minimum entitlements has occurred

Improving information sharing between labour inspectors and other regulators

- 24 **Agree** that the Employment Relations Act 2000 enable the establishment of necessary mechanisms to:
 - 24.1 support appropriate information sharing between labour inspectors and other relevant agencies for the purposes of identifying, investigating and enforcing non-compliance with employment standards
 - 24.2 enable labour inspectors to share information with other relevant agencies for the purposes of improving government enforcement activities
- 25 **Note** that Approved Information Sharing Agreements (through regulation under Part 9A of the Privacy Act 1993) would be developed where it is considered necessary to share personal information between labour inspectors and other relevant regulators in ways that would otherwise contravene the Privacy Act 1993
- 26 **Note** that mechanisms that provide for information sharing between labour inspectors and other relevant agencies require protection of that information; including the storage, handling and access to the information

Improving the legislative settings and processes for dealing with breaches of employment standards

Amending the object of the Employment Relations Act 2000

- 27 **Agree** that a new object is added to the Employment Relations Act 2000 that reflects the importance of the need for effective enforcement of employment standards

Providing for high-level functions for the employment relations/employment standards system

- 28 **Agree** that amendments are made to the Employment Relations Act attributing key functions to MBIE that reflect MBIE's role in:
- 28.1 providing advice and information to employees and employers about the regulatory system to encourage compliance
 - 28.2 supporting effective resolution of employment relationship problems by providing access to appropriate dispute resolution services
 - 28.3 upholding employment standards through robust and timely enforcement action

Amending the functions of labour inspectors

- 29 **Agree** that the functions of labour inspectors be amended to better reflect their role in:
- 29.1 monitoring and enforcing compliance with employment standards
 - 29.2 publishing reports, guidelines or making comments about any matter relating to enforcement of employment standards
 - 29.3 working with other regulatory bodies, including by sharing information

The role of mediation in employment standards breaches

- 30 **Agree** that, subject to the discretion set out in recommendation 31, breaches that are substantially about employment standards are addressed at the Employment Relations Authority
- 31 **Agree** that the Employment Relations Authority would retain the discretion to direct employment standards cases to mediation in circumstances such as:
- 31.1 the facts of the alleged breach are not clear and the Employment Relations Authority considers that mediation will provide a lower cost and more timely pathway to clarifying the facts, or
 - 31.2 the alleged breach appears to be minor (in terms of, for example, dollar value, number of instances and the period over which these instances occurred) and inadvertent, or

31.3 both parties agree that mediation would assist in resolving the issue

Additional legislative amendments

- 32 **Agree** that the Employment Court has discretion to award a portion of the fine for failure to comply with a compliance order (under s140 of the Employment Relations Act) to the aggrieved employee
- 33 **Agree** to remove the requirement that a compliance order for failure to comply with an Employment Relations Authority determination is necessary before the matter can go before the Employment Court
- 34 **Agree** to enable the Crown to seek compliance at the Employment Court with any Employment Relations Authority determination that awards it a penalty
- 35 **Agree** that labour inspectors can seek, on behalf of employees, monies owed as a result of illegal deductions under the Wages Protection Act 1983
- 36 **Agree** that explicit provision is made to clarify that the fines awarded by the Employment Court for failure to comply with a compliance order (under s140 of the Employment Relations Act) can be enforced under the Summary Proceedings Act 1957

s9(2)(f)(iv) of the Official Information Act 1982

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Other matters

- 41 **Direct** the Minister for Workplace Relations and Safety to report back to Cabinet with any further proposals relating to casual employment, employment with no guarantee of minimum hours and restrictions on secondary employment by May 2015, including whether any such proposals should be included in the Employment Standards Bill

- 42 **Direct** the Minister for Workplace Relations and Safety to report back to Cabinet with any further proposals relating to deductions from wages that reimburse employers for loss or damage caused either by third parties or employees themselves, including deductions clauses in employment agreements, by May 2015, including whether any such proposals should be included in the Employment Standards Bill

Financial implications

- 43 **Note** that Budget Ministers will consider the funding of the employment relations and standards system in Budget 2015
- 44 **Note** that the proposals in this paper are not reliant on the outcome of Budget 2015

s9(2)(f)(iv) of the Official Information Act 1982

Legislation

- 46 **Note** that an omnibus Employment Standards Bill which will also include the changes to the parental leave scheme announced as part of Budget 2014, needs to be introduced by mid-2015 in order to achieve the 1 April 2016 implementation date for the parental leave changes
- 47 **Invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to these recommendations
- 48 **Authorise** the Minister for Workplace Relations and Safety to make decisions consistent with the overall policy decisions in this paper on any issues which arise during the drafting process.

Hon Michael Woodhouse
Minister for Workplace Relations and Safety

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