



Report of the Petitions Committee

Petition of Ana Briggs: Complete transparency in recruitment

March 2023

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Sarah Pallett
Deputy Chairperson

Petition of Ana Briggs

Recommendation

The Petitions Committee has considered the petition of Ana Briggs—Complete transparency in recruitment—and recommends that the House take note of its report.

Request for transparency about recruitment decisions

The petition was presented to the House on 18 March 2022. It requests:

That the House of Representatives require that employers be completely honest with applicants about why they don't progress in a recruitment process.

Comments from the petitioner

The petitioner has applied for many jobs but told us that most of the time she does not hear back from the prospective employer. When she does hear back, she is usually told that somebody else was chosen for the job, the employer has decided not to progress the application, or that she does not have experience or enough experience. Ms Briggs believes that, when an employer says an applicant does not have enough experience, they may have decided not to hire the applicant for some other reason that they do not wish to tell them.

The Human Rights Act 1993 includes the right not to be discriminated against on certain grounds.¹ However, Ms Briggs said that, although it is banned, discrimination still happens: “for all we know, discrimination happens all the time and nobody will ever find out because employers don't have to say”.

Ms Briggs would like a law change so that employers must tell applicants exactly why they are not hiring them. She said this would help to establish whether the reason for not hiring a person is discrimination that is prohibited under the Act.

Other hiring practices

The petitioner also said that some jobs are advertised even though the employer has already decided that a particular person will be offered the job and has no intention of hiring a different applicant. She said this practice should be banned because it is not fair on the unsuccessful applicants. She also said employers should not waste time interviewing applicants whom they have already decided, before the interview, not to hire. Ms Briggs said she would prefer that employers say exactly what they want in a candidate, even if it is discriminatory.

¹ The prohibited grounds of discrimination are listed in [section 21 of the Human Rights Act](#). One of the prohibited grounds is disability. Under section 22, the prohibited grounds apply to employment matters.

Comments from the Ministry of Business, Innovation and Employment

The Ministry of Business, Innovation and Employment—Hīkina Whakatutuki said that, under the Human Rights Act, people can complain to the Human Rights Commission if they consider they have been discriminated against in pre-employment processes. They would require evidence that they were treated differently under one of the grounds of unlawful discrimination. Also, under the Privacy Act 2020, employers must provide applicants with personal information relating to the recruitment process if they ask for it.

The ministry commented that it would be possible for employers to disguise any discrimination. This makes it difficult to prove and enables employers who unlawfully discriminate to avoid being held to account.

The ministry submitted that it would be difficult to legislate to require employers to provide completely honest and transparent reasons for not progressing with an applicant. In particular, it noted the difficulty of proving that the reasons the employer gave were genuine. It said that enforcement would be difficult.

Some of us were interested in the effects of 90-day trial periods. Employers with up to 19 employees can use a 90-day trial period with new employees.² The ministry referred us to some 2015 research by the Treasury on the effects of 90-day trial periods. It found that the 90-day trial period did not significantly affect the probability that a disadvantaged job-seeker would be hired. It did note that trial periods may have altered some employers' behaviour at a "micro" level.³

Comments from the Human Rights Commission

The Human Rights Commission—Te Kāhui Tika Tangata receives complaints about the job application process from people who think they have been unlawfully discriminated against when applying for a job.

In the three years from January 2020 to December 2022, the commission said, it received more than 60 such complaints. Four were about being rejected for a job and not receiving sufficient feedback or explanation from the prospective employer. We were told that none of these complaints progressed.⁴

Comments from the Privacy Commissioner

The Privacy Commissioner—Te Mana Mātāpono Matatapu told us that job applicants can ask why they were rejected for a job under Principle 6 of the Privacy Act. Principle 6 provides individuals with the right to request access to personal information about themselves. The information does not have to be written down; it may be in the employer's mind.⁵ However, the employer might withhold the information on one of the grounds in

² For more information, see the ministry's [Employment New Zealand website](#).

³ Information about the research can be accessed via [this link](#). See also [this Cabinet paper](#) about the research.

⁴ Information on disputes resolution is on the [Human Rights Commission website](#).

⁵ More information is available in the relevant [case note](#).

sections 49–53 of the Act. One ground is that the information does not exist or cannot be found despite reasonable efforts to find it.⁶

Our response

We were impressed with Ms Briggs' work in preparing her petition and her willingness to speak to us about it. We found the discussion very helpful.

One of Ms Briggs' points was that unsuccessful applicants may find it helpful to know why they were not chosen for a job. Another of her points was about unlawful discrimination. Ms Briggs commented that the law already prohibits the types of discrimination she is concerned about. If an unsuccessful applicant were to complain to the Human Rights Commission, they would have to show the discrimination, which could be difficult.

We acknowledge that it can be frustrating for jobseekers to feel they do not have enough information about why they were not hired. However, we accept the ministry's view that it would be very difficult to enforce a requirement for prospective employers to provide complete information on the reasons they did not proceed with an application.

We have put Ms Briggs in touch with her local members of Parliament. We also gave her the details of several organisations in her local area that help people looking for work or with employment-related matters.

We wish Ms Briggs all the best in her search for a job.

⁶ More information on getting personal information is available on the [Privacy Commissioner's website](#).

Appendix

Committee procedure

The petition was referred to us on 18 March 2022. We met between 12 May 2022 and 9 March 2023 to consider it. We received written submissions from the petitioner, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Human Rights Commission, and the Privacy Commissioner. We heard oral evidence from the petitioner and the Ministry of Business, Innovation and Employment.

Committee members

Hon Jacqui Dean (Chairperson)
Rachel Boyack (to 8 February 2023)
Dr Liz Craig (from 8 February 2023)
Shanan Halbert (to 23 August 2022)
Sarah Pallet
Steph Lewis (23 August 2022 to 8 February 2023)
Nicole McKee
Todd Muller (to 19 October 2022)
Jamie Strange (from 8 February 2023)
Teanau Tuiono

Evidence received

The documents we received as evidence in relation to this petition are available on the [Parliament website](#).

A recording of our hearing can be accessed at the following link:

- [Hearing of evidence](#) (11 August 2022)