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# Better protections for contractors

## Consultation summary

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NOVEMBER 2019

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MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

New Zealand Government

# HOW CAN I HAVE MY SAY?



## CONSULTATION PERIOD

Please provide your feedback by 5pm,  
Friday 14 February 2020



## MAKE A SUBMISSION

Go online to [www.mbie.govt.nz/contractorsconsultation](http://www.mbie.govt.nz/contractorsconsultation) to read more about the options and make your submission.



## COMPLETE THE SURVEY

Go to [www.mbie.govt.nz/contractorsconsultation](http://www.mbie.govt.nz/contractorsconsultation) to tell us about your experience of working as a contractor and the changes you think Government should make to improve your working life.



## EMAIL

Got a question? Email us at [ContractorsConsultation@mbie.govt.nz](mailto:ContractorsConsultation@mbie.govt.nz)

## Better protections for contractors

### Public consultation

### The Government wants all contractors in New Zealand to have access to decent work and conditions

*In New Zealand, there are broadly two types of workers: employees and contractors*

Employees receive a range of minimum employment standards laid out in employment law. This includes the right to be paid at least the minimum wage, various types of leave and protection against unfair dismissal. Contractors work under commercial and competition laws. They have fewer rights and protections, but generally enjoy greater levels of choice and flexibility in their work lives. They operate their own business, can work for multiple organisations, and have control over how their work is done.

*Contracting arrangements can be beneficial to both firms and workers*

Firms with uncertain demand for their products or services can benefit from offering flexible, short-term contracts. Workers may choose to accept work as a contractor to suit their individual lifestyle and preferences.

It is important that workers and firms can participate in the labour market in a way that works for them.

*...but they do not work for everyone*

Some workers are misclassified as 'independent contractors' so lack basic employment rights, and some workers are caught in the 'grey zone' between employee and contractor status. These workers may run their own business, but depend on one firm for most of their income and have little control over their work.

Both types of contractors are vulnerable to poor outcomes. This is because they lack both the protections offered to employees by law, as well as the power to negotiate a better deal. The changing nature of work, including the expansion of the 'gig' economy, may increase the number of workers engaged in low-paid contracting work in New Zealand.

*The Government is proposing four groups of options for change to protect workers today, and in the future*

### OPTIONS FOR CHANGE

We want your feedback on which options would protect vulnerable contractors. The options aim to:

- > ensure all employees receive their statutory minimum rights and entitlements
- > reduce the imbalance of bargaining power between firms and vulnerable contractors
- > ensure that system settings encourage inclusive economic growth and competition.

#### Options 1 - 3

Deter misclassification of employees as contractors

#### Options 4 - 7

Make it easier for workers to access a determination of their employment status

#### Options 8 - 9

Change who is an employee under New Zealand law

#### Options 10 - 11

Enhance protections for contractors without making them employees

*Your feedback will help us develop a comprehensive response to the challenges faced by contractors who experience poor outcomes in New Zealand.*

# What is the problem we want to address?

Some workers are misclassified as 'independent contractors' so miss out on basic employment rights and protections.

Some workers fall in the 'grey zone' between employee and contractor status and can be vulnerable to poor working conditions.



## What is the difference between employees and contractors?

### Employees

Employees have minimum employment rights under New Zealand law, including the right to:

- › Be paid at least the minimum wage,
- › Rest and meal breaks,
- › Paid annual and public holidays,
- › Sick and bereavement leave,
- › Bargain collectively through their union,
- › A proper process if fired or made redundant.

## What is misclassification?

Some workers are labelled as 'contractors' even though they are, in substance, employees. They are expected to arrive at work at certain times, work under close supervision, and use the firm's equipment.

Misclassified workers miss out on basic employment rights and protections such as paid annual and public holidays, paid sick and bereavement leave, and the right to a proper process if they are fired or made redundant. This means that in some cases misclassification may hide exploitation.

## What is the 'grey zone'?

Workers in the grey zone have characteristics in common with both employees and contractors.

Like contractors, these workers may operate their own businesses and use their own equipment, but like employees they may depend on one firm for most or all of their income, and have little control over their work.

They have the responsibilities of contracting, such as paying their own taxes, but may not enjoy the choice and flexibility of truly 'independent' contractors.

## Do all contractors in the 'grey zone' experience poor outcomes?

There are many services that are legitimately better performed under a contract, and many workers choose to be contractors to suit their individual lifestyle and preferences.

Some contractors depend on one firm for most or all of their income, but are satisfied with these working arrangements and feel they have enough flexibility and control.

It is important that these people can continue to work in the way that suits them best.

## Contractors

Contractors are people who are engaged by a firm to provide services. They are responsible for paying their own tax and ACC levies and are not covered by most employment laws.

In return, contractors generally enjoy greater levels of flexibility and control than employees. They can operate their own businesses, work for multiple organisations, and decide how to do their work.



### Example: Sue's story

**Sue was employed as a hotel cleaner for two years.**

She was then dismissed and re-engaged as a contractor by the same company. She still works exclusively for this company and wears their uniform. The company decides her pay and her hours.

Almost a year after she was engaged as a contractor, Sue's workmate explained to her that she should have been paying her own tax, KiwiSaver contributions and ACC levies. Sue thought the money coming into her account had already had all the necessary deductions made and she was confused by the process of working out her own taxes.

Sue wants to go back to being an employee, but she's scared to talk to the cleaning company in case she loses her job. Sue doesn't think she could get other work in her town, because she has limited skills and there are no other companies nearby offering similar work.



### Example: Matiu's story

**Matiu is a courier driver**, contracted to a courier company. He took this job because he liked the idea of being his own boss. He had to buy a van when he started this work. He puts the company's branded decals on his vehicle and wears their uniform. He has ongoing costs for petrol and vehicle maintenance.

Matiu's contract is to deliver a certain number of parcels per day. He cannot take breaks if he wants to make it home in time to have dinner with his children, which makes him stressed and tired. The company recently changed Matiu's delivery route so he has to deliver over a larger area for the same amount of money. This often leads to him working extra hours and earning less than the minimum wage.

If Matiu needs a day off, he has to find someone who is pre-approved by the courier company to do the work for him and has to pay them. Sometimes he has to pay the relief driver more than his own daily income, to convince them to take the job. The courier company still requires him to 'request' this day off and explain his reason for being away.



### Example: Anya's story

**Anya is a specialist IT contractor.** For three years, she has been working exclusively for one insurance company that has ongoing, consistent work for her. She usually spends three days a week in their offices.

The company asked Anya if she would like to become an employee and continue with the same work and hours, but with employee benefits and protections.

Anya turned down this offer. She likes being a contractor as she has greater flexibility around when to come to work, she gets paid more, and there are favourable tax conditions. She can take on extra work when she wants more money, and take a break between contracts when she wants a holiday.

Anya isn't concerned about the insurance company discontinuing her work, because her skills are in high demand and she knows she can easily find other work.



## Tell us what you think

What issues do contractors face, and how can these be addressed?

Visit [www.mbie.govt.nz/contractorsconsultation](http://www.mbie.govt.nz/contractorsconsultation) or email us at [ContractorsConsultation@mbie.govt.nz](mailto:ContractorsConsultation@mbie.govt.nz)

# Options for change

Tell us what you think



We are considering whether these four groups of options could help:

- › Workers who have been misclassified as contractors, like Sue, and
- › Workers caught in the 'grey zone' between employee and contractor status, like Matiu.

**We could deter firms from misclassifying their employees as contractors**

**We could make it easier for workers to access a determination of their employment status**

These options would help ensure all workers who are in substance employees receive what they are entitled to under employment law

1

Increase proactive targeting by Labour Inspectors to detect non-compliance

2

Give Labour Inspectors the ability to decide workers' employment status

3

Introduce penalties for misrepresenting an employment relationship as a contracting arrangement

4

Introduce disclosure requirements for firms when hiring workers

5

Reduce costs for workers seeking employment status determinations

6

Put the burden of proving a worker is a contractor on firms

7

Extend the application of employment status determinations to similar workers

**We could change who is an employee under New Zealand law**

These options would increase the likelihood of vulnerable contractors being recognised as employees

8

Define some occupations of workers as employees

9

Change the tests used by courts to determine employment status to include vulnerable contractors

**We could enhance protections for contractors without making them employees**

These options would create new working rights for contractors

10

Extend the right to bargain collectively to some contractors

11

Create a new category of workers with some employment rights and protections



**Tell us what you think**

Which options could make the most difference to vulnerable contractors?  
What other options should we consider?

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