



Submission form

How to provide us with feedback

The Ministry of Business, Innovation and Employment (MBIE) is collecting written submissions to gather a range of views on improving the rights and protections of contractors in New Zealand.

We need to hear what you think about the options for strengthening legal protections for vulnerable contractors by **14 February 2019.**

This submission form brings together all the questions asked throughout the discussion document, with page references, so you can go back and look at the relevant topic as necessary.

We know there are a lot of questions, but you don’t have to answer them all if you don’t want to. You can choose to respond to as many or as few areas of the consultation as you want to, or feel are relevant to you.

When you’re done, email your submission to [**ContractorsConsultation@mbie.govt.nz**](https://mako.wd.govt.nz/otcsdav/nodes/97611614/mailto_contractorsconsultation%40mbie.govt.nz).

If you can’t email your submission, you can post it to:

**Employment Standards Policy**  
Labour and Immigration Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140

If you email us your submission, there is no need to post a hard copy as well.

Use of information

Your submission will be used to inform MBIE’s policy development process, including advice to the Minister for Workplace Relations and Safety on final options for change.

When making a submission, you can do so anonymously and choose not to provide contact details. We may contact submitters (people who make submissions) directly if we require clarification of any matters in submissions or would like further information from them.

Release of information

Submissions we receive may be published on our website at [www.mbie.govt.nz](http://www.mbie.govt.nz). When you make a submission, MBIE will consider that you have consented to it being published on the MBIE website unless you clearly state otherwise. Any summary of submissions we create may also mention your submission. If you do not want all or part of your submission to be published or included in summary of submissions, please tell us which parts and the reasons why. For example, you may not want members of the public knowing something that happened to you personally.

Submissions we receive may be requested under the Official Information Act 1982. MBIE will consult with submitters when responding to any such requests. If you object to the release of information in your submission, MBIE will take that into account.

The Privacy Act 1993 governs how we collect, hold, use and disclose personal information provided in your submission. You have the right to access and correct this personal information.

Any personal information you supply to MBIE in the course of making a submission will only be known by the project team and used for developing policy advice relating to this project. Please clearly indicate if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Submitter information

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| --- |
| **What is the name of the person completing this submission?** |
|  |
| **If you are submitting on behalf of an organisation, what is the name of that organisation?** |
|  |
| **Is it okay for your name and/or organisation details to be published if we publish your submission or a summary of submissions?** |
| Yes, you can publish my name and organisation details with my submission.  No, keep my name and organisation details confidential. |
| **Please provide us with at least one method of contacting you, in case we need to discuss your submission further.** |
| |  |  | | --- | --- | | Email |  | | Phone |  | | Postal address |  | | Alternative |  | |
| **What sector(s) does your submission most closely relate to, if applicable?**  For example, the sector you may work, operate or be a representative in. |
| Agriculture, forestry and fishing  Information media and telecommunications  Mining  Financial and insurance services  Manufacturing  Rental, hiring and real estate  Electricity, gas, water and waste services  Professional, scientific and technical services  Construction  Administrative and support services  Wholesale trade  Public administration and safety  Retail trade  Education and training  Accommodation and food services  Health care and social assistance  Transport  Arts and recreation services  Other (*please specify*)  N/A |
| **Which of the following most closely describes your perspective as a submitter?** |
| Central government  Local government  Non-governmental organisation (NGO)  Iwi, hapū or Māori organisation  Employer  Employer representative body  Worker representative body (eg union)  Law firm and/or legal expert  Academic  Media  Individual  Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*please specify*) |
| **We want to ensure we are hearing views from a range of stakeholders. If you or your organisation identifies with an ethnicity, you can choose to indicate this below.** |
| Māori  New Zealand European  Samoan  Cook Island Māori  Tongan  Niuean  Chinese  Indian  Other (*please specify*) |

Objectives, issues and challenges

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| **What do we want to achieve? (See page 15 of discussion document)** | |
| 1 | Do you agree with the objectives and risks outlined in this section? Please provide a reason for your answer. |
|  | |
| 2 | Do you have any other ideas for defining what we should aim to achieve through this work? If yes, please provide details. |
|  | |
| **Potential issues and challenges (page 17)** | |
| 3 | Do you agree with the characterisation of the key issues? If yes, do you think both of the issues identified are of equal importance? If no, what other issues and challenges should be considered? |
|  | |
| 4 | From your perspective, what makes dependent contractors vulnerable to exploitation? What situations should we be most concerned about? |
|  | |
| 5 | How could these problems (either as outlined in this document or in your answer to questions 3 and 4) affect different groups of people in New Zealand? |
|  | |
| 6 | In your view, which sectors or occupations are most affected? Where possible, please provide evidence or information to support your view. |
|  | |
| 7 | How urgent is the need for change? |
|  | |
| **What can we achieve through information and guidance? (Page 25)** | |
| 8 | Is there enough information available about the difference between employment and contracting arrangements, and how to hire workers using the appropriate relationship? If yes, how helpful is it? If no, what other information or guidance would be helpful? |
|  | |
| 9 | Other than guidance, what other non-legislative tools could we use to prevent misclassification and improve protections for vulnerable contractors? |
|  | |
| 10 | How effective do you think non-legislative tools could be (either guidance as outlined above, or other things in your answer to the previous question)? |
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| 11 | Do you think we need to change the law? Why, or why not? |
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Options to deter misclassification of employees

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| **Your views on deterring misclassification of employees as contractors (page 28)** | |
| 12 | From your perspective, what do you think causes or contributes to misclassification of employees as contractors? |
|  | |
| 13 | Should we respond differently depending on whether misclassification is accidental or intentional? What if misclassification doesn’t result in exploitation, and is knowingly accepted by all parties? |
|  | |
| 14 | Are there any other options we should consider to prevent and resolve misclassification? |
|  | |
| **Option 1: Increase proactive targeting by Labour Inspectors to detect non-compliance (page 29)** | |
| 15 | What do you see as the main benefits, costs and risks of this option? |
|  | |
| 16 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 17 | Should misclassification be a priority for investigation by Labour Inspectors? Or should misclassification only be prioritised where there is an element of exploitation (eg employees being treated as contractors and being paid less than the minimum wage)? |
|  | |
| 18 | Should Labour Inspectors be able to challenge how a firm has hired its workforce, even if individual workers do not want to make a complaint themselves? |
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| **Option 2: Give Labour Inspectors the ability to decide workers’ employment status (page 30)** | |
| 19 | What do you see as the main benefits, costs and risks of this option? |
|  | |
| 20 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 21 | Should Labour Inspectors be able to make decisions about workers’ employment status? |
|  | |
| 22 | Should Labour Inspectors need the consent of at least one of the parties to a work relationship (eg a worker or their firm) before making employment status decisions? Or is there sufficient public interest in the issue of misclassification that they should they be able to make employment status decisions without either party’s consent? |
|  | |
| 23 | If Labour Inspectors are given the power to make employment status determinations, what should the legal effect of these determinations be? |
|  | |
| **Option 3: Introduce penalties for misrepresenting an employment relationship as a contracting arrangement (page 32)** | |
| 24 | What do you see as the main benefits, costs and risks of this option? |
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| 25 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 26 | Even if this option doesn’t increase our ability to detect misclassification, is it worth pursuing? What other changes could this option be combined with? |
|  | |
| 27 | In what circumstances should the penalty apply? For example:   * 1. Should there be a penalty even if both parties genuinely wanted a contracting arrangement? If yes, should both firms and workers be liable for the penalty?   2. Should there be a penalty if firms claim that the misclassification is a mistake, or a result of confusion on their part? If so, how could this be proven?   3. Should there be a penalty for parties with significant control or influence over an employer that misclassifies an employee and breaches minimum employment standards? |
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Options to make it easier for workers to access a determination of their employment status

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| **Your views on making it easier for workers to access a determination of their employment status  (page 34)** | |
| 28 | From your perspective, what do you think hinders or stops workers from challenging their employment status? |
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| 29 | Which options are likely to make the biggest difference for workers, in terms of encouraging them to come forward when they may have been misclassified as contractors? |
|  | |
| 30 | Are there any other options we should consider to make it easier for workers to challenge their employment status? |
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| **Option 4: Introduce disclosure requirements for firms when hiring contractors (page 35)** | |
| 31 | What do you see as the main benefits, costs and risks of this option? |
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| 32 | What changes could be made to improve the effectiveness of this option? |
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| 33 | In what sorts of contracting arrangements should firms have to disclose information about the arrangement to contractors? |
|  | |
| 34 | What information should contractors receive before agreeing to a contract? |
|  | |
| 35 | Should this requirement to disclose information also be extended to existing contractors? |
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| **Option** **5: Reduce costs for workers seeking employment status determinations (page 37)** | |
| 36 | What do you see as the main benefits, costs and risks of this option? |
|  | |
| 37 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 38 | What are the different types of costs involved in taking legal action? |
|  | |
| 39 | Which costs present the biggest barriers, and how could these be reduced? |
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| **Option 6: Put the burden of proving a worker is a contractor on firms (page 38)** | |
| 40 | What do you see as the main benefits, costs and risks of this option? |
|  | |
| 41 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 42 | Is it fair to put the onus on firms to prove a relationship is one of contract rather than employment? |
|  | |
| 43 | Is it realistic to expect firms to have the information needed to prove a relationship is a contracting arrangement rather than one of employment? If yes, what records should firms be required to keep in relation to contractors? |
|  | |
| **Option 7: Extend the application of employment status determinations to workers in fundamentally similar circumstances (page 40)** | |
| 44 | What do you see as the main benefits, costs and risks of this option? |
|  | |
| 45 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 46 | What degree of similarity should be needed between workers before a decision about employment status is extended? |
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| 47 | Should any limits be set on how far an Authority or court decision can be extended? If so, what should those limits be? |
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Options to change who is an employee under New Zealand law

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| **Your views on changing who is an employee under New Zealand law (page 41)** | |
| 48 | Do you agree that we should treat vulnerable contractors (who are a subset of dependent contractors) as employees? Why or why not? |
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| 49 | If either of these options is pursued, should affected vulnerable contractors be allowed to keep working as contractors if they want to? |
|  | |
| 50 | Is there some other way to provide protections to vulnerable contractors, without treating them as employees? |
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| **Option 8: Define some occupations of workers as employees (page 43)** | |
| 51 | What do you see as the main benefits, costs and risks of this option? |
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| 52 | What changes could be made to improve the effectiveness of this option? |
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| 53 | How should occupations be chosen for inclusion in the legal definition of an employee? Are there particular characteristics or conditions to look for? |
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| 54 | In what situations should workers be allowed to opt-out (ie continue as contractors) if their occupation is included in the legal definition of an employee? |
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| 55 | How can we manage the risk of undermining workforce flexibility for firms, and limiting parties’ freedom of contract? |
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| **Option 9: Change the tests used by courts to determine employment status to include a wider group of workers (page 45)** | |
| 56 | What do you see as the main benefits, costs and risks of this option? |
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| 57 | What changes could be made to improve the effectiveness of this option? |
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| 58 | Should we codify the existing common law tests for determining employment status? Would this be beneficial even if the tests weren’t changed? Why or why not? |
|  | |
| 59 | Should new tests be added to the existing common law tests for determining whether a worker is an employee or a contractor? If yes, what indicators of vulnerability should be included? |
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| 60 | How should these tests be assessed? For example, what are good indicators of dependence; the amount of risk passed on to a contractor; or bargaining power imbalance? |
|  | |
| 61 | Should the tests for employment status be weighted? If so, is there a particular test that is more or less important than the rest when determining employment status? |
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Options to enhance protections for contractors without making them employees

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| **Your views on enhancing protections for contractors without making them employees (page 47)** | |
| 62 | What rights and protections are appropriate to extend to contractors in the ‘grey zone’ without changing their employment status? |
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| 63 | Are there any other ways to protect vulnerable contractors, without making them employees, which we have not considered? |
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| **Option 10: Extend the right to bargain collectively to some contractors (page 48)** | |
| 64 | What do you see as the main benefits, costs and risks of this option? |
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| 65 | What changes could be made to improve the effectiveness of this option? |
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| 66 | Should contractors be allowed to bargain collectively? |
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| 67 | If a Fair Pay Agreement (FPA) system is introduced for employees, should that be extended to contractors? If so, which contractors? |
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| 68 | Other than an FPA system, is there any other framework or process we should consider to support collective bargaining by contractors? |
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| 69 | Are there some contractors in particular who would benefit from collective bargaining, or who should be covered by collective agreements? |
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| **Option 11: Create a new category of workers with some employment rights and protections (page 50)** | |
| 70 | What do you see as the main benefits, costs and risks of this option? |
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| 71 | What changes could be made to improve the effectiveness of this option? |
|  | |
| 72 | What employment rights and protections would make the most difference to vulnerable contractors? |
|  | |
| 73 | Which contractors would benefit from a third category being introduced? What are their working conditions and experiences? |
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| 74 | Is there any way of introducing a third category without increasing the risks of ‘gaming the system’ (ie arbitrage, where people capitalise on loopholes to move people who would otherwise be employees into a new third category)? |
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Summary of options

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| **Your views on the eleven options (page 52)** | |
| 75 | In your view, what option (or combination of options) should we pursue? Why? |
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| 76 | Are there any other ideas you think we should consider to address the problems faced by vulnerable contractors? If so, please provide details. |
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| 77 | Which contractors would be most helped by your preferred options? |
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| 78 | Do you think there are any options we should not pursue? Why? |
|  | |
| 79 | When thinking about workers in the ‘grey zone,’ do you think we should do whatever it takes to help vulnerable contractors like Matiu, even if it might impact on other workers in the ‘grey zone’ like Anya, who prefer to work as contractors? |
|  | |