



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Strengthening protections for vulnerable contractors – Approval to consult	Date to be published	9 December 2019

List of documents that have been proactively released

Date	Title	Author
23 October 2019	Cabinet paper: Strengthening protections for vulnerable contractors – Approval to consult	Office of the Minister for Workplace Relations and Safety
23 October 2019	Strengthening Protections for Vulnerable Contractors – Release of Discussion Document: DEV-19-MIN-0291	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- Maintenance of the law
- Confidential advice to Government



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Strengthening Protections for Vulnerable Contractors: Release of Consultation Document

Portfolio **Workplace Relations and Safety**

On 23 October 2019, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that contractors are generally covered only by commercial law, and do not benefit from most statutory employment rights and protections, including the minimum wage, paid annual leave, and the right to bargain collectively;
- 2 **noted** that concerns have been raised about contractors' working conditions for many years, including in public submissions on the Minimum Wage (Contractor Remuneration) Amendment Bill in 2015 and 2016;
- 3 **noted** that stakeholders' concerns have focused on two interrelated issues:
 - 3.1 workers who are in substance employees, but are misclassified as contractors by firms to reduce their entitlements;
 - 3.2 'dependent contractors', who occupy a 'grey zone' between employee and contractor status, missing out on both the choice and flexibility associated with self-employment, and the legal protections afforded to employees;
- 4 **noted** that the Minister for Workplace Relations and Safety proposes to develop a comprehensive response to these issues, that:
 - 4.1 builds on steps the government has already taken to better support contractors in the screen industry [DEV-19-MIN-0140] and curb unfair commercial practices [DEV-19-MIN-0189];
 - 4.2 recognises connections with consultations underway on work to combat temporary migrant worker exploitation [DEV-19-MIN-0242] and to develop a Fair Pay Agreement system, which would create a new mechanism for collective bargaining to set binding minimum wages and terms across an occupation or sector [DEV-18-MIN-0100 and DEV-19-MIN-0266];
 - 4.3 situates the issues in a Future of Work context and seeks to future-proof the system;
 - 4.4 Confidential advice to Government

- 5 **noted** that addressing these issues would require legislative changes, and would be likely to require Budget funding to increase resources for the Labour Inspectorate and other employment institutions;
- 6 **noted** that the options identified are at an early stage of development, and that public consultation at this stage will assist in:
- 6.1 refining understanding of the nature and scale of problems being experienced by contractors;
- 6.2 identifying benefits and costs, as well as any feasibility issues with the options;
- 6.3 gauging the level of public support for changes in this area;
- 7 **agreed** to publicly consult on the following options, which are not mutually exclusive and could be combined in various ways as a package:

Options to deter the misclassification of employees as contractors

- 7.1 Option one: increase proactive targeting by the Labour Inspectorate to detect non-compliant behaviour by firms;
- 7.2 Option two: give labour inspectors the ability to make decisions about a worker's employment status (this function currently sits with the Employment Relations Authority and Employment Court);
- 7.3 Option three: introduce a specific breach for misrepresenting an employment relationship as a contracting arrangement (similar to the 'sham contracting' provisions in Australia's Fair Work Act 2009);

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

- 7.4 Option four: introduce disclosure requirements for employers when hiring contractors;
- 7.5 Option five: reduce legal costs for workers seeking employment status determinations;
- 7.6 Option six: change the legislation to put the onus of proving a worker is a contractor on firms (reversing the current burden of proof);
- 7.7 Option seven: extend the application of status determinations to go beyond the applicants themselves, and also apply to those who work for the same employer on fundamentally similar conditions;

Options to change who is an employee under New Zealand law

- 7.8 Option eight: define some occupations or types of workers as employees (with opt-outs for individuals who can establish that they are genuinely operating as independent businesses);
- 7.9 Option nine: expand the definition of employee by changing the 'real nature of the relationship' test, for example by codifying a range of factors courts must consider;

Options to enhance protections for contractors without making them employees

- 7.10 Option ten: extend the right to bargain collectively to some contractors;

- 7.11 Option eleven: create a new, third category of workers with some employment rights and protections – in between the employee and contractor categories;
- 8 **agreed** to the release of the document *Better Protections for Contractors: Discussion Document for Public Feedback* (the consultation document), attached to the submission under DEV-19-SUB-0291, subject to any minor, technical and editorial changes that may be authorised by the Minister for Workplace and Relations in consultation with the Minister of Finance and the Attorney-General;
- 9 **noted** that the consultation will run for six weeks, from 11 November until 20 December 2019, which will include opportunities for workshops with key stakeholders;
- 10 **invited** the Minister for Workplace Relations and Safety to report back to DEV in April or May 2020, with final policy proposals and any financial implications of the recommended approach.

Janine Harvey
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon James Shaw
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Finance
Attorney-General
Minister for Workplace Relations and Safety