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## EMPLOYMENT

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## SUBMISSIONS SOUGHT ON PERSONAL GRIEVANCE SYSTEM

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PARTNER

This week, the Government initiated a review of the personal grievance provisions in Part 9 of the Employment Relations Act.

Part 9 defines “personal grievance” (PG) as including any claim for unjustified dismissal; unjustified disadvantage; discrimination; sexual or racial harassment; duress relating to union membership or non-membership; and failure to comply with Part 6A on employment protection in restructuring. These grounds for bringing a PG are outside the scope of the review.

Public consultation is focussed on the operation of the PG system and ways to enhance mediation services to help resolve problems before they escalate to the point of requiring formal intervention.

Key provisions in the spotlight include the much debated objective test of justification under section 103A of the Act. The test is whether the employer’s actions or how the employer acted was what a fair and reasonable employer *would* have done in all the circumstances at the time.

### **How the personal grievance system works**

Public views are sought on the PG system based both on actual experience and perceptions of how the system works. As in previous public consultation processes, a

discussion paper poses questions to focus feedback on particular areas under review. However, feedback is also welcomed on any additional matters associated with the operation of the legislation, and specifically any matters related to workplace productivity.

Issues for comment on the operation of the PG system include:

- Costs of resolving PGs;
- Varying quality and effectiveness of non-lawyer employment advocates and “no win no fee” arrangements;
- Balance of fairness between employers and employees and the section 103A test of justification;
- Ensuring access to justice by awareness of PG processes and affordable advice/representation;
- Negative consequences of delays in the system and suggestions for improvement;
- Disproportionate impact of employment relationship problems on small/medium businesses;
- Eligibility for raising a personal grievance, including options for introducing a minimum service requirement or limiting employees earning over a specified salary from raising a PG; extended maximum trial

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period (which can be agreed with employees of businesses with less than 20 employees and during which an employee cannot bring a PG for dismissal) beyond 90 days/to medium businesses with 20 to 49 employees; and reduced limitation periods for raising and lodging a PG claim (currently 90 days and 3 years respectively);

- Effectiveness of remedies, and options for removing reinstatement as the primary remedy; introducing non-monetary remedies towards training and education; and increasing financial remedies available.

### Enhancing mediation services

The discussion paper contemplates improving existing mediation services and extending their scope with a focus on preventative mediation and early problem resolution.

Options under consideration include new flexible arrangements as to approach and venue, video conferencing and/or on-line dispute resolution services; use of mediation for health and safety issues; preventative mediation addressing workplace trends, policies and procedures; and earlier intervention in individual disputes.

### Deadline for feedback

Submissions close at 5pm on **31 March 2010**. Further information about making submissions is available at the Department of Labour website:  
[www.dol.govt.nz/consultation](http://www.dol.govt.nz/consultation)

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