

**Submission**

**by**

**THE  
NEW ZEALAND  
INITIATIVE**

**to the Education and Workforce Select Committee**

**on the**

**Employment Relations Amendment Bill 2025**

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## **1. INTRODUCTION AND SUMMARY**

- 1.1 This submission on the Employment Relations Amendment Bill (the Bill) is made by The New Zealand Initiative (the Initiative), a Wellington-based think tank supported primarily by major New Zealand businesses.
- 1.2 The Initiative undertakes research that contributes to the development of sound public policies in New Zealand, advocating for a competitive, open, and dynamic economy and a free, prosperous, fair, and cohesive society.
- 1.3 Our members span the breadth of the New Zealand economy. The views expressed in this submission are those of the authors rather than the Initiative's members.
- 1.4 We support the Bill's intent to provide greater certainty for contracting parties and improve labour market flexibility. However, we consider proposed new section 6 (7) of the principal Act, defines "specified contractor," too narrowly to capture all legitimate contracting models. Facilitation models used by platform-based businesses such as Uber and other rideshare and delivery services may be excluded.
- 1.5 We recommend amending proposed section 6 (7) so that it covers both direct contracting models and facilitation or agency models, ensuring the Bill achieves its purpose for the full range of contracting arrangements in the modern economy.
- 1.6 We also support the proposed new sections 67I and 113A, inserted by clauses 10 and 11, which remove the ability of high-income earners to bring unjustified dismissal claims, while retaining other personal grievance rights.
- 1.7 Both reforms will improve labour market flexibility, reduce compliance costs, and support productivity growth.

## **2. GREATER CERTAINTY FOR CONTRACTING PARTIES**

- 2.1 We strongly support the Bill's aim to provide greater certainty for contracting parties, improve labour market flexibility, and reduce compliance costs.
- 2.2 Certainty over contracting arrangements is important for businesses, workers, and consumers alike. The Bill's proposed "gateway test" offers an opportunity to provide clarity and predictability to contracting relationships that are genuinely intended to be independent contracting arrangements.
- 2.3 From an economic perspective, clearer contracting rules reduce transaction costs, lower the risk of costly disputes, and encourage investment in business models that depend on flexible, mutually beneficial arrangements. They allow firms to match capacity more efficiently to demand, improving productivity and responsiveness.
- 2.4 Workers will benefit from more diverse opportunities that can better suit their skills, availability, and preferences. Consumers benefit from a wider range of services, greater innovation, and lower prices.
- 2.5 In aggregate, these effects contribute to a more dynamic and competitive economy.

*Proposed new section 6 (7) not drafted broadly enough*

- 2.6 While we support the Bill's aims, proposed section 6 (7) in the Bill, which sets out the test for "specified contractor," is drafted too narrowly to achieve the Bill's stated purpose.
- 2.7 As drafted, proposed section 6 (7) assumes a contracting model in which a worker ("Person A") performs work *for* the contracting business ("Person B"). This covers traditional contracting models and some platform arrangements, but not all.
- 2.8 Many platform-based businesses – including Uber and other rideshare and delivery platforms – operate as intermediaries or facilitators, connecting service providers with end customers without the provider performing work *for* the platform.
- 2.9 Under the current drafting, such facilitation models may be excluded from the safe harbour despite meeting the policy rationale for inclusion. This risks uncertainty for a substantial and growing part of the economy, undermining the Bill's intent to support contracting certainty and flexibility.

*Recommended change*

- 2.10 To meet the Bill's purpose, the "specified contractor" definition in section 6 (7) should be broadened to ensure it captures both:
- direct contracting models where Person A performs work for Person B as an independent contractor; and
  - facilitation or agency models where Person A performs work facilitated by Person B.
- 2.11 This change would align the legal test with the economic realities of modern platform models in the "gig" economy and ensure consistent treatment for all legitimate contractor arrangements, whether traditional or platform-based.

### **3. EXEMPTING THE HIGHLY PAID FROM UNJUSTIFIED DISMISSAL PROCEEDINGS**

- 3.1 We support the amendments in Subpart 3 of Part 1 of the Bill (new sections 67I and 113A) that remove the right to raise a personal grievance for unjustified dismissal for employees whose annual wages or salary meets or exceeds the specified wages and salary threshold, proposed to be set at \$180,000 and indexed to average weekly earnings.
- 3.2 This reform implements recommendations made in The New Zealand Initiative's 2021 research note *Nothing Costs Nothing: Why unjustified dismissal procedures should not apply to the highly paid* and reflects arguments we have advanced in subsequent commentary. The \$180,000 threshold is less than the Initiative's proposed \$250,000 threshold, but aligns with the Government's current top tax rate threshold and will capture only a small proportion of the workforce in genuine senior leadership roles.
- 3.3 The current unjustified dismissal regime was designed to protect ordinary workers from arbitrary termination. Applied to high-earning executives and technical specialists, it creates unintended consequences. By making it costly and time-consuming to remove underperforming senior staff, the regime can harm productivity, damage workplace culture, and ultimately place the jobs of ordinary workers at risk.

- 3.4 The reform will allow boards and business owners to act more decisively when leadership changes are needed, bringing New Zealand into line with Australia's long-standing high-income exclusion. It will encourage more dynamic hiring and promotion decisions for senior roles, knowing that necessary changes can be made without protracted procedural disputes.
- 3.5 High-income earners will continue to be protected from discrimination, harassment, and breach of contract. The ability for employers and employees to agree to opt back into the unjustified dismissal protections provides further flexibility.
- 3.6 In our view, this targeted change will strengthen overall employment security for the workforce by reducing the risk that poor senior leadership undermines business viability. It will also contribute to lifting productivity and wages.
- 3.7 We appreciate the opportunity to submit on the Bill and would be happy to discuss this matter further with the Committee.

**ENDS**