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Employment Relations Amendment Bill

Submissions on behalf of The Law Association of New Zealand by the Employment Law Committee

INTRODUCTION

1. This submission is made by the Employment Law Committee of The Law Association of New Zealand (TLANZ). The Committee comprises experienced employment law practitioners with a broad range of expertise acting for both employers and employees, across the private and public sectors. Members include private practice lawyers, in-house counsel, union representatives, and barristers. This diversity of experience ensures the Committee brings a balanced and pragmatic perspective to employment law reform proposals, and the seniority of our members ensures that considerable collective experience and expertise are brought to our views.

2. The Committee welcomes the opportunity to comment on the Employment Relations Amendment Bill 2025 (the Bill). The proposed amendments to the Employment Relations Act 2000 (the Act) are far-reaching and significantly alter the balance between flexibility for employers and protection for employees. The Bill raises fundamental questions about procedural fairness, the principle of good faith, access to justice, and the consistency of the employment law framework.

3. In this submission, the Committee respectfully outlines its concerns with the Bill's proposed reforms, in particular:

    - The introduction of an "income ceiling" removing access to personal grievance remedies;
    - The erosion of statutory and common law rights;
    - The amendment of core statutory definitions that risk undermining settled case law and legal certainty;
    - The increased likelihood of litigation and inconsistent application of the law;
    - The dilution of core employment law principles that have guided New Zealand's workplace relations system for over three decades; and
    - The likely unintended consequence of greater uncertainty and costs for all parties involved.

4. The Committee opposes the Bill in its current form and recommends that key provisions—particularly those relating to personal grievance exclusions and the gateway test for specified contractors—be reconsidered or removed.

EXECUTIVE SUMMARY

5. The Bill proposes significant reforms that, in the Committee's view, undermine the foundations of New Zealand employment law. These include:

    - Removing the right of high-income earners to bring personal grievances;
    - Replacing a fact-based inquiry into employment relationships with a rigid gateway test;
    - Curtailing the courts' and the Employment Relations Authority's discretion to award remedies for unjustified dismissal where there is alleged contributory behaviour.

6. These changes risk creating uncertainty, increasing litigation, reducing access to justice, and shifting New Zealand's employment relations system away from its long-standing principles of fairness and good faith. The Committee does not consider that the changes are supported by evidence or reflect a reasoned response to identifiable problems in the current framework.

7. We urge the Select Committee to reconsider the Bill and, at a minimum, recommend substantial amendments to preserve fairness, certainty, and compliance with New Zealand's domestic and international obligations.

SUBMISSIONS

PART I: Main Amendments

Subpart 1 - Amendments relating to specified contractors

8. The Bill proposes the introduction of a new category of "specified contractor," which would exclude individuals meeting certain criteria from the definition of "employee" under section 6 of the Employment Relations Act 2000 (the Act). This represents a significant departure from the current legal approach, which requires the Authority or Court to determine the "real nature of the relationship" by assessing the substance of the working arrangement.

9. Under the Bill's proposed framework, an individual who satisfies the "gateway test" would be deemed a specified contractor and therefore excluded from employee status. This means they would not be entitled to minimum employment entitlements, including paid leave, minimum wage, or the ability to raise a personal grievance.

10. The gateway test replaces the established evaluative and purposive analysis with a checklist approach. If specific criteria are met—including the contract stating the individual is an independent contractor, and the existence of rights to subcontract, refuse work, and work for others—then the individual would be automatically classified as a contractor.

11. The Committee has significant concerns that this test oversimplifies complex working relationships and risks undermining the nuanced case law that has developed over decades. In particular, there is a well-established understanding in employment jurisprudence that contractual labels do not necessarily reflect the true nature of a relationship. Many employers structure agreements to present the appearance of contractor status, even where the reality is one of employment.

12. The Committee is concerned that the proposed framework could be exploited. Employers may adopt standard form agreements containing boilerplate clauses asserting, for example, a right to subcontract or refuse work, even where the practical reality is otherwise, which might bring another hurdle to clear for employees to challenge their status.

13. Of particular concern is the likely impact on gig economy workers, labour-hire arrangements, and other vulnerable cohorts who are already susceptible to misclassification. Without a rigorous, substance-based test, many of these workers may fall outside the scope of employment protections despite operating in employment-like conditions.

14. Although the Bill includes a requirement that workers be given a "reasonable opportunity" to obtain legal advice, this safeguard is vague and insufficient. It does not go as far as existing obligations under section 63A of the Act, which requires employers to advise employees of their right to seek independent advice and provide a reasonable opportunity to do so. The proposed requirement lacks clarity on what constitutes a "reasonable opportunity" and does not address the imbalance of bargaining power that may be present.

15. Committee members have direct experience acting for workers—particularly in construction, hospitality, cleaning, and other low-wage sectors—who have been engaged as independent contractors despite their working arrangements bearing all the hallmarks of employment. In many such cases, the only indications of contractor status are contractual labels and theoretical rights to subcontract or decline work. If enacted, the gateway test would make it easier to formalise such arrangements while evading employment obligations.

16. Moreover, there is concern that the narrow drafting of the test may inadvertently include some contractors while excluding others who should reasonably be caught by its scope. For example, many professional contractors (such as consultants or gig economy workers) may not be explicitly labelled as "independent contractors" but operate under similar conditions.

17. If the gateway test is to be retained, the Committee recommends the following refinements to address key deficiencies:

    - **Intent Criterion**: Not all contracting agreements use the term "independent contractor." Terms like "consultant" or "freelancer" are commonly used. The criterion should be updated to ensure the substance of the label, rather than the precise terminology, governs the analysis.

    - **Exclusivity Criterion**: In professional industries such as finance and technology, it is common and legitimate for principals to restrict contractors from working with competitors while engaged on a project. The Committee recommends clarifying whether such restraints would breach the "no restriction on working for others" criterion, and whether reasonable exceptions can be provided in such cases.

    - **Subcontracting Criterion**: Principals may have legitimate grounds to reject certain subcontractors, such as prior unsatisfactory performance or lack of required qualifications. The current criterion does not accommodate such concerns unless a statutory requirement applies. The test should permit reasonable limits on subcontractor approval.

    - **Declining Additional Work Criterion**: In practice, contractors who decline work may not be offered further opportunities. The Committee finds this criterion ambiguous and of limited utility. If retained, it should be clarified with practical examples to avoid misinterpretation.

    - **Access to Independent Advice**: The phrase "reasonable opportunity" to obtain independent advice lacks specificity. The provision should mirror section 63A of the Act, which obliges employers to advise employees of their right to seek advice and give a clear timeframe to do so. Without such guidance, the obligation may be inconsistently applied or rendered ineffective.

18. The Committee strongly recommends preserving the existing section 6 framework. The current approach—requiring the Authority or Court to determine the real nature of the relationship based on substance over form—is well-established, flexible, and better suited to the evolving nature of modern work.

19. If a new category of specified contractor is to be introduced, it must be done with extreme caution, guided by clear evidence, and subject to robust safeguards. Respectfully, the current drafting does not meet these standards and risks significantly reducing protections for a growing class of workers.

Subpart 2 – Amendments relating to remedies for personal grievance if contributing behaviour by employee

20. The Bill introduces new sections 123B and 123C, which would prohibit the Employment Relations Authority or the Employment Court from awarding remedies for personal grievances where an employee's contribution constitutes serious misconduct.

21. The Committee opposes this proposed reform.

22. Section 123 of the Employment Relations Act 2000 already provides the Authority and the Court with discretion to provide remedies or not provide remedies depending on the circumstances of the particular case. The proposed sections 123B and 123C therefore, represent a significant and, in the Committee's view, unnecessary departure from current law.

23. The Committee holds significant concerns with the proposed insertion of sections 123B and 123C for the following reasons:

- **Elimination of Judicial Discretion**
  The proposed provisions would impose a rigid rule, preventing any remedy from being awarded where the employee has engaged in serious misconduct. This removes the ability of the Authority or Court to assess the overall justice of the situation and respond proportionately. For example, an employee who makes a one-off error could be summarily dismissed and left without any redress, even if the employer failed to follow a fair process. Such outcomes are inconsistent with the principle that both substance and procedure matter in employment disputes.

- **Undermining Procedural Fairness Obligations**
  The reforms risk incentivising employers to bypass established procedural obligations. If the mere presence of serious misconduct is sufficient to bar all remedies, employers may be emboldened to dismiss employees without undertaking a proper investigation or process, confident that they will be shielded from any consequences. This risks eroding the principle that fairness in procedure is as important as the substantive grounds for dismissal. An unintended consequence might be that employers feel emboldened to dismiss without process where they consider serious misconduct has occurred (although we note that whether serious misconduct has occurred is ultimately to be determined by the Authority or Court).

- **Uncertainty and Overbreadth of Key Terms**
  The Bill does not define the terms "contribution" or "serious misconduct," leaving significant scope for inconsistent or overly expansive interpretation. Conduct that is minor, unintentional, or lacking in malicious intent could be characterised by employers as "serious misconduct" depending on their policy or interpretation. In practice, this could lead to unjust results and discourage employees from exercising their rights, whilst also potentially resulting in a higher percentage of successful employee claims where the employer's interpretation of serious misconduct is broader than the Authority's or the court's.

- **Duplication of Existing Legal Mechanisms**
  Sections 123 and 124 already empower the Authority and Court to reduce or decline to award remedies. The proposed amendments add little in practical terms beyond removing discretion. Rather than enhancing clarity, they duplicate existing provisions and risk complicating the remedial framework.

- **Likely to Increase Litigation**
  By introducing inflexible rules, the proposed amendments are likely to generate new litigation around threshold issues, including whether an employee's conduct qualifies as "serious misconduct" or whether contribution has been established. This is especially likely if the Authority and Court seek to preserve fairness by interpreting the new

provisions narrowly. Paradoxically, the proposed reforms may reduce legal certainty and increase dispute resolution costs.

24. The Committee strongly recommends that proposed sections 123B and 123C be removed from the Bill. The current framework in sections 123 and 124 strike an appropriate balance by allowing the Authority and the Court to consider whether to award remedies, when justified by the circumstances, and if so, whether to reduce them.[1]

25. If Parliament wishes to place additional emphasis on the seriousness of employee misconduct, this can be achieved without eliminating discretion altogether. One option would be to introduce a rebuttable presumption that serious misconduct will lead to a significant reduction in remedies (e.g., 50%, or even 100%), while still allowing the Authority or Court to depart from that presumption where justice requires.

Subpart 3 – Amendments relating to specified wages and salary Thresholds

26. Personal grievance rights have long been a foundational element of New Zealand's employment relations framework. Since their statutory introduction in the 1970s, they have played a vital role in ensuring that all employees, regardless of income, seniority, or bargaining power, have access to justice and procedural fairness in the employment relationship. These rights have provided employees with a mechanism to challenge dismissals, unjust treatment, and other disadvantageous conduct, while promoting industrial harmony, legal clarity, and mutual accountability.

27. This right was originally limited to unionised workers, but with the passage of the Employment Contracts Act 1990, personal grievance rights were extended to all employees. This represented a deliberate legislative shift toward "one law for all" in respect of workplace rights and responsibilities. Since then, both the Employment Contracts Act and the subsequent Employment Relations Act 2000 (ERA) have reaffirmed this universal entitlement, reflecting a broad consensus that all workers—regardless of status—deserve the ability to challenge unfair treatment and seek independent adjudication of employment disputes.

28. The Committee opposes this proposal and raises the following concerns:

28.1. Erosion of Access to Justice and the Rule of Law

28.1.1. The proposed income-based exclusion represents a fundamental departure from the principle that all employees are entitled to equal access to legal protections, regardless of their salary. By introducing a threshold the Bill creates a bifurcated legal framework in which a class of employees is stripped of recourse to personal grievance rights based solely on their earnings.

28.1.2. This reform is not only arbitrary but also deeply inequitable. Employees in high-income roles are not immune from vulnerability in the employment relationship. Senior professionals, executives, and specialists may be exposed to particular risks in the context of restructures, governance disputes, or personality-driven dismissals. The notion that income alone equates to bargaining power or diminished need for legal protection fails to reflect the realities of modern workplaces.

[1] *Xtreme Dining t/a Think Steel* v *Dewar* [2016] NZEmpC 136

28.1.3. The exclusion also risks insulating employers from scrutiny in the very cases where accountability is most critical. By removing the right to challenge unjustified dismissal, the Bill weakens one of the most effective mechanisms for ensuring fairness, procedural compliance, and industrial integrity at senior levels of employment.

28.1.4. This change raises serious rule of law concerns. The practical effect of the proposal is to deny legal protections to a group of employees based on an arbitrary threshold, without compelling policy justification. The resulting inequality is incompatible with the longstanding principle that legal protections in employment should be universal and non-discriminatory.

28.1.5. Moreover, the Bill appears to extinguish not only statutory rights but also common law remedies. The exclusion would prevent affected employees from bringing a personal grievance for unjustified dismissal or any other proceeding in relation to the ending of their employment. This effectively introduces a form of "employment at will" for high earners—an approach that is foreign to New Zealand law and unprecedented in the employment relations framework. While employees lose access to grievance mechanisms, employers retain full enforcement rights over contractual obligations, further deepening the imbalance.

28.2. Good Faith Obligations

28.2.1. The Bill proposes to remove the employer's obligation to comply with good faith in section 4 (1A)c by providing access to relevant information and an opportunity to comment on it prior to termination for the employees who are excluded from bringing a personal grievance for unjustified dismissal. Furthermore, the proposed exclusion that an employee may not bring a personal grievance 'or legal proceedings' in respect of a dismissal is unclear whether this also means legal proceedings on the grounds of breach of good faith more broadly (if that breach is related to the dismissal), or only in relation to section 4(1A)c.

28.2.2. It is imperative in our view that the right to bring proceedings for breach of good faith is preserved even in dismissal situations for high earning employees, and that this is expressly made clear in the Bill. The duty of good faith is central to New Zealand's employment law, underpinning every aspect of the employment relationship. Eroding this obligation in any way would invite adversarial approaches, discourage principled negotiations, and undermine trust in employment relationships.

28.3. Risk of Arbitrary and Manipulable Threshold

28.3.1. The Committee has significant concerns about the proposal to use a fixed annual salary figure as the sole criterion for determining access to personal grievance rights. While administratively simple, this approach is both blunt and inequitable. It fails to account for the wide variety of ways in which remuneration is structured across sectors and roles, and it risks creating anomalies that undermine the legitimacy of the personal grievance regime.

28.3.2. For example, under the proposed threshold, an employee with a base salary of $175,000 and an additional $100,000 in incentive payments would retain the right to raise a personal grievance. In contrast, an employee with a base salary of $185,000 and no incentive component would be excluded from doing so. This outcome is plainly inequitable. It invites both employers and employees to manipulate remuneration structures during contract negotiations to either retain or remove legal protections—an outcome that is contrary to principles of transparency and good faith.

28.3.3. It appears that the Bill's emphasis on base salary—rather than total remuneration—is intended to avoid difficulties in assessing variable incentive components that may fluctuate from year to year. However, this only reinforces the Committee's concern that the approach is ill-suited to modern remuneration practices and will inevitably give rise to inconsistent and unjust results. If the entitlement to pursue a personal grievance cannot be clearly and fairly determined across the board, the reliability and integrity of the personal grievance regime is weakened for all employees.

28.3.4. The proposed threshold also creates a highly manipulable boundary that is vulnerable to deliberate structuring for legal advantage. For instance:

- An employee earning $179,000 per year would retain access to personal grievance rights, whereas a colleague earning $181,000 would not—despite potentially having identical roles and levels of responsibility.
- Employers may alter salary structures to include taxable benefits, allowances, or performance-based bonuses to exceed the threshold and eliminate legal obligations.

28.3.5. Such outcomes would frustrate the Bill's apparent purpose—providing legal certainty—and would introduce further complexity and cost into employment arrangements. More broadly, the proposal fails to take into account meaningful contextual factors such as:

- The employee's bargaining power at the time of engagement;
- The degree of influence the employee has within the organisation;
- The employee's level of responsibility, decision-making authority, or governance control;
- Whether the employee had a genuine opportunity to negotiate the terms of employment on equal footing.

28.3.6. A purely financial test ignores these critical dimensions and relies instead on a proxy—income—that bears only a weak and often misleading relationship to actual seniority or power within an organisation. The Committee submits that any threshold, if adopted at all, should be based on a more principled and nuanced assessment, incorporating the nature of the role, level of autonomy, and access to independent advice. This would ensure that any limitation on personal grievance rights is proportionate, justifiable, and aligned with the realities of New Zealand workplaces.

28.4. Chilling Effect on Workplace Protections and Legal Remedies

28.4.1. The Committee is concerned that the proposed exclusion of high-income earners from the personal grievance regime will have a significant chilling effect on workplace protections and the broader culture of fairness and accountability in employment relationships.

28.4.2. The rationale underpinning this exclusion appears to be the assumption that employees earning over $180,000 per annum are necessarily senior executives whose dismissal could materially disrupt the functioning of an enterprise, and that such employees possess sufficient bargaining power and resources to protect themselves without the need for statutory grievance rights. However, this assumption is not borne out in practice and risks creating arbitrary and unjust outcomes.

28.4.3. Relying solely on a base salary threshold to determine who may be excluded from legal protections is both overly simplistic and misaligned with the operational realities of many organisations. For example, in large entities with thousands of employees, a salary of $180,000 may be paid to mid-level managers, technical specialists, or long-serving professionals who have little to no involvement in governance or enterprise-wide decision-making. These individuals may be senior in experience or remuneration but lack any real influence over organisational strategy, policy, or employment practices. Despite this, they would be excluded from the protections of the personal grievance regime, while their employers would continue to benefit from full contractual enforcement rights.

28.4.4. Conversely, the proposed salary threshold would fail to capture individuals in smaller organisations—such as principals of most primary schools or CEOs of small NGOs—who may earn below the threshold but wield significant operational and strategic authority. Many such organisations are governed by voluntary boards or community stakeholders who, in practice, hold far less power than the senior employee in question. These examples demonstrate that remuneration alone is a poor proxy for managerial authority or organisational impact.

28.4.5. If the intent of the exclusion is to target employees whose grievances might genuinely disrupt the functioning of an enterprise, a more nuanced and targeted approach is needed. The Committee endorses the position outlined in the Ministry of Business, Innovation and Employment's Regulatory Impact Statement, which proposes a dual threshold: a significantly higher income level—such as $250,000—and a secondary assessment of the employee's role, level of managerial responsibility, and potential to affect the organisation's operations. Under this framework, exclusion would apply only to those in genuine executive or governance positions where the potential for procedural disruption justifies limitation of legal rights.

28.4.6. The Committee also draws attention to the many examples of professional employees who, while highly paid, do not meet this governance-level test. These include airline pilots, hospital doctors, senior police officers, lawyers, engineers, and other professionals whose dismissal would have little to no impact on the continuity or integrity of enterprise operations. An individual pilot's grievance is unlikely to affect airline viability; a doctor's grievance will not destabilise the health system; and a senior inspector's dispute will not impair police operations nationwide. Yet all would be excluded under the current proposal, highlighting the overreach and bluntness of the Bill's drafting.

28.4.7. The exclusion has serious implications for workplace conduct. The ability to raise a personal grievance functions as a vital safeguard against unjustified dismissal and improper employer conduct. It ensures that dismissal decisions are subject to scrutiny, which in turn promotes lawful and fair practices. If this avenue is removed for a class of employees, there is a significant risk that employers will take advantage of the resulting legal vacuum—relying more readily on informal terminations, "without cause" dismissals, or confidential settlements that avoid accountability.

28.4.8. These rights are not mere technicalities; they are manifestations of fundamental natural justice. Their removal for high-income employees undermines the relational nature of employment law in New Zealand and may result in increased litigation through alternative legal channels, such as discrimination claims, breach of fiduciary duty, or tort-based actions. In this sense, the Bill may not reduce legal claims at all—it may simply redirect them into less certain and more costly arenas, to the detriment of all parties.

28.4.9. For these reasons, the Committee urges the Select Committee to reject the proposed exclusion in its current form and to adopt, if any limitation is to proceed, a principled and proportionate framework based on both income and role-based criteria. In doing so, the integrity of New Zealand's employment law system can be preserved without sacrificing the essential protections that underpin fair and balanced workplace relations.

28.5. Elimination of Common Law Rights

28.5.1. The Committee is concerned that the Bill, in addition to excluding a class of employees from access to statutory personal grievance remedies, may also have the effect—whether intended or not—of extinguishing their ability to bring common law claims for breach of contract arising from dismissal or disadvantage connected to dismissal. In doing so, the Bill would strip affected employees of any residual legal protection, even in circumstances where a dismissal is manifestly unjust.

28.5.2. New Zealand's employment law framework has long maintained a dual system in which statutory grievance procedures and common law contractual remedies co-exist. Although claims for breach of contract at common law have become rare due to the prominence of the personal grievance regime, they remain a critical safeguard in circumstances where statutory remedies are not available. This includes, for example, where the true (and unlawful) basis for a dismissal only becomes known more than 90 days after the termination—placing the grievance out of time under section 114 of the Act. In such cases, a contractual claim for breach of the employment agreement has provided affected employees with a meaningful avenue to seek redress through the courts.

28.5.3. The proposed amendments appear to abrogate not only personal grievance rights but also these longstanding common law protections. This is evidenced by the broad and categorical language in the proposed new section 113A(2), which states: *"...the employee may not bring a personal grievance or legal proceedings in respect of the dismissal..."*.[2] The phrase "or legal proceedings" is highly significant. Unless amended or clarified, it may be interpreted as barring all forms of legal challenge—statutory or common law—against the dismissal. The Committee considers this to be an extraordinary curtailment of legal rights and access to justice, and it seriously undermines the primacy of the contractual relationship between the parties which parties have bargained for.

28.5.4. The consequence of such a provision would be to render certain employees entirely defenceless in the face of a procedurally flawed, discriminatory, or malicious dismissal. An affected employee could be dismissed following a complaint that is later shown to be unfounded or even knowingly false, yet have no mechanism to challenge the outcome in any forum. In no other area of civil law do we deny individuals the right to seek a remedy in court based solely on their income. Such a framework runs counter to the rule of law and to the principles of natural justice that underpin New Zealand's legal system.

28.5.5. This also places New Zealand out of step with comparable common law jurisdictions. In countries such as Australia, Canada, and the United Kingdom, higher-income employees who may not have access to statutory unfair dismissal remedies retain their ability to pursue breach of contract claims. These jurisdictions recognise that senior employees, while typically more experienced, are not immune from mistreatment, misjudgment, or procedural unfairness. New Zealand has historically adopted a similarly principled approach. The removal of all avenues of redress for a category of employees—simply

[2] See proposed section 113A(2), Employment Relations Amendment Bill 2025.

because they earn above a specified threshold—would represent a significant and troubling policy departure.

28.5.6. In addition, the elimination of common law claims may undermine compliance incentives and workplace standards. The ability of senior employees to seek redress—even infrequently—acts as an important check on employer conduct. Knowing that no legal challenge is possible may embolden some employers to bypass fair process, rely on untested allegations, or effect dismissals without adequate justification.

28.5.7. The Committee strongly urges the Select Committee to reconsider this aspect of the Bill. If the proposed exclusion from statutory personal grievance rights is to remain, then—at a minimum—the Bill should preserve an affected employee's ability to pursue a common law breach of contract or wrongful dismissal claim. Such an amendment would mitigate the worst effects of the proposed reform and maintain some access to justice for employees who may otherwise be left without any legal recourse.

28.5.8. The Committee believes that such access is not only consistent with New Zealand's legal traditions, but essential to the fair and balanced regulation of employment relationships. Inappropriate dismissals should not be beyond scrutiny simply because they involve high earners. The law must provide all individuals with a meaningful opportunity to contest actions that violate their rights, contracts, or professional reputations.

28.6. Administrative Burden and Legal Uncertainty

28.6.1. The Committee is also concerned that the proposed income-based exclusion from personal grievance rights introduces significant administrative and legal uncertainty into employment relationships. The current drafting of the Bill lacks the clarity and specificity necessary for fair, efficient, and consistent application.

28.6.2. Critically, the Bill provides no guidance as to when the threshold is to be assessed—whether at the commencement of employment, at the time of dismissal, or across a rolling average of income over a defined period. This ambiguity alone is likely to lead to disputes, particularly in situations involving mid-year remuneration changes, short-term fluctuations, or retrospective performance bonuses.

28.6.3. There is also no requirement for employers to notify employees that they may be excluded from personal grievance protections based on their income. This omission could lead to situations where employees, unaware that their legal rights have been compromised, proceed on the mistaken belief that they are entitled to the full protections of the Employment Relations Act. Given the power imbalance that often characterises employment relationships, this lack of disclosure is particularly problematic.

28.6.4. The administrative implications for employers are also considerable. Employers would need to conduct complex calculations, monitor changes in remuneration, and assess eligibility under uncertain legal standards. Legal advisers and human resources professionals would face heightened compliance burdens, and disputes over eligibility are likely to result in protracted and costly litigation. Moreover, the Employment Relations Authority and the Employment Court may be drawn into preliminary jurisdictional disputes simply to determine whether a grievance can proceed, thereby delaying substantive resolution of employment disputes.

28.6.5. The Committee strongly recommends that this proposed exclusion be removed from the Bill. However, if the Government is determined to proceed with such a reform, the Committee submits that several critical safeguards must be introduced to mitigate the legal and administrative risks:

- Employers should be required to inform employees, in writing and at the time of hiring or any material change in pay, that their access to grievance rights may be affected by their level of remuneration;
- A rebuttable presumption should be introduced to ensure access to personal grievance rights where an employee demonstrates a lack of bargaining power, vulnerability, or undue influence, regardless of income;
- The ability to bring a claim at common law for wrongful dismissal or other breach of contract should be preserved for all employees who are excluded from statutory remedies.

28.6.6. New Zealand's employment law framework has long been grounded in principles of natural justice, procedural fairness, and equal access to legal remedies. Introducing a poorly defined, income-based exclusion not only undermines those principles, but creates unnecessary complexity and invites litigation. The Committee therefore urges the Select Committee to recommend rejection of this Bill in full. If the Bill proceeds, it must be substantially revised to include the above safeguards in order to maintain the integrity and accessibility of New Zealand's employment relations system.

Subpart 4—Amendments relating to collective agreements and new or prospective employees

29. The Bill proposes the amendment of section62 and the repeal of section 63 of the Employment Relations Act 2000, which currently require that new employees who are not union members be employed on terms consistent with the applicable collective agreement for their first 30 days. We note however that employers are still required to inform the employee about the collective agreement and that they may join it and provide contact details (which is essentially the law as it was prior to 2019).

30. Some of our Committee members welcome the removal of the 30 day rule as it will create less administrative burden for employers while noting that some safeguards are still in place; however, others oppose the change on the basis that the 30-day rule provides a transitional safeguard, ensuring that new employees commence employment on the same terms as union members while considering whether to join a union. This promotes parity and guards against immediate pressure or disadvantage. Its removal risks undercutting collective agreements and incentivising employers to offer inferior individual terms to non-union members, thereby weakening the collective bargaining framework, which will mostly affect vulnerable and low wage employees.

Part 2: Transitional amendment

31. The Bill requires that all existing employment agreements be amended within 12 months to incorporate the new exclusion by income ceiling regime. However, the legislation is silent on what occurs if agreement to amend is not reached. In the absence of express guidance, the new exclusion provisions appear to apply by default, effectively overriding existing contractual grievance rights.

32. This default approach undermines contractual certainty and places pressure on employees—particularly those in vulnerable or less powerful positions—to accept disadvantageous terms. It also incentivises employers to delay or avoid negotiation, knowing that the law will ultimately take effect in their favour without the agreement of their current employees.

33. Such a framework runs counter to the principles of good faith and mutuality that underpin the Employment Relations Act 2000. The lack of safeguards—such as rights to legal advice, independent representation, or recourse to dispute resolution—leaves employees exposed to unilateral changes to their core entitlements.

34. The Committee is also concerned that the 12-month implementation window is unworkable in sectors with large workforces and high numbers of affected employees—such as in healthcare, aviation, local government, and professional services. The administrative burden and compliance costs of renegotiating and amending potentially thousands of individual agreements are substantial.

35. To address these concerns, the Committee recommends:

- Ring-fencing existing employees' protections and making the income ceiling exclusion applicable only to new employees.
- Extending the transition period to allow for proper consultation and negotiation;
- Preserving existing contractual terms unless voluntarily varied by mutual agreement and with informed consent; and
- Introducing procedural safeguards akin to section 63A of the ERA, including a clear right to seek independent legal advice and access to a timely, fair dispute resolution process.

36. Without these protections, the transitional arrangements risk undermining fairness, legal certainty, and confidence in the integrity of New Zealand's employment relations framework.

CONCLUSION

37. In conclusion, the Bill proposes multiple and very significant changes to fundamental legal principles and procedures that have stood the test of time and about which we are unaware of any significant dissatisfaction, certainly none as would warrant such radical changes. The Employment Law Committee of The Law Association of New Zealand (TLANZ) is deeply concerned about the direction and scope of the proposed amendments in the Employment Relations Amendment Bill 2025. While each individual provision raises important legal and practical issues, the cumulative effect of the reforms risks dismantling fundamental protections that underpin New Zealand's employment relations framework. The Bill significantly narrows access to justice, removes expert and experienced judicial discretion, and arguably weakens safeguards for vulnerable workers. In doing so, it departs from longstanding principles of fairness, good faith, and equality before the law that have guided employment relations in this country for decades.

38. The Committee considers that several of the proposed amendments—such as the income-based exclusion from personal grievance rights, the remedies for personal grievances in certain circumstances and the specified contractor gateway test—are not supported by empirical evidence, nor are they proportionate responses to demonstrated issues. Moreover, many changes risk creating legal uncertainty, workplace conflict, and reputational damage to New Zealand's settled employment law system. If enacted in their current form, these provisions may place New Zealand in breach of its international obligations under ILO Conventions and at odds with prevailing

international labour standards that seek to strengthen, rather than diminish, employment protections in an evolving labour market.

39. Accordingly, the Committee strongly recommends that the Bill be substantially revised. Key proposals should either be removed or replaced with more principled, evidence-based alternatives. The Committee encourages the Select Committee to adopt a cautious and considered approach and reiterates its willingness to engage further in this process. TLANZ remains committed to working collaboratively with Parliament to ensure that any reforms promote fairness, clarity, balance, and consistency.

ACKNOWLEDGMENTS

40. The Employment Law Committee of The Law Association of New Zealand acknowledges the collective contributions of its members to the development of this submission. The Committee particularly recognises the work of Graeme Colgan, Rosemary Wooders, David Fleming, Moira McFarland and Catherine Stewart, whose expertise and considered input have informed and strengthened this document.

41. The Committee would welcome the opportunity to appear before the Select Committee, either in person or via Zoom, to further elaborate on the issues raised and to assist the Committee in its deliberations.

Ngā mihi

Catherine Stewart
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