MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Brooke van Velden	**Portfolio**	Minister for Workplace Relations and Safety
Title of Cabinet paper	Employment Relations Amendment Bill: Report back to Cabinet and policy changes for Select Committee	**Date to be published**	8 December 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
October 2025	Employment Relations Amendment Bill: Report back to Cabinet and policy changes for Select Committee	Office of the Minister for Workplace Relations and Safety
13 October 2025	Employment Relations Amendment Bill: Report back to Cabinet and policy changes for Select Committee CAB-25-MIN-0356 Minute	Cabinet Office
1 October 2025	Updated Regulatory Impact Statement - Providing better certainty for Contractors	MBIE

Information redacted **<u>YES</u> / NO** *(please select)*

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Some information has been withheld for the reasons of Legal professional privilege and International Relations.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Policy Committee

Employment Relations Amendment Bill – Report back to Cabinet and policy changes for Select Committee

Proposal

1. This paper seeks your approval to amend the gateway test and the scope of the income threshold in the Employment Relations Amendment Bill (the Bill).

Relation to government priorities

2. The proposals in this paper address the ACT New Zealand – New Zealand National Party Coalition Agreement (the Coalition Agreement) commitments to create better certainty for contractors and simplify personal grievances, and support the Government's 'Going for Growth' agenda.

Executive Summary

3. On 9 June 2025, Cabinet agreed to introduce the Employment Relations Amendment Bill (the Bill) and refer it to the Education and Workforce Committee for consideration of four months. Cabinet agreed that it will consider the feedback to Select Committee before the Departmental Report is submitted, and will further consider the Bill as reported back from Select Committee [CAB-25-MIN-0189].

4. Submissions have now closed for the Bill and my officials have conducted an initial analysis. In light of submissions, I propose changes to two areas of the Bill: the gateway test for contractors and the scope of the income threshold for unjustified dismissal personal grievances.

5. I propose three changes to refine the criteria in the gateway test, to ensure it covers the types of contracting arrangements Cabinet intended, and is clear for contractors and employers whether their contracting arrangements meet the test.

6. I also propose broadening the income threshold for unjustified dismissal personal grievances by using a wider definition of income that includes forms of remuneration like bonuses and shares. To ensure this does not increase the number of employees who are captured by the threshold, I propose raising the threshold to all employees earning above $200,000 regardless of their remuneration structure.

Background

7. The Bill amends the Employment Relations Act 2000 (the Act) to give effect to several ACT – National Coalition Agreement commitments, by:

7.1 providing greater certainty for contracting parties [ECO-24-MIN-0179];

7.2 strengthening consideration and accountability for the employee's behaviour in the personal grievance process [ECO-24-MIN-0268];

7.3 introducing an income threshold for unjustified dismissal personal grievances [ECO-24-MIN-0265]; and

7.4 removing the '30 day rule' and associated compliance and information requirements [ECO-25-MIN-0046]

8. On 9 June 2025, Cabinet agreed to introduce the Employment Relations Amendment Bill (the Bill) [CAB-25-MIN-0189] and refer it the to the Education and Workforce Committee for consideration of four months, which has been extended to five months.

9. Cabinet also agreed to consider the feedback received to Select Committee before the Departmental Report is submitted, and further consider the Bill as reported back from Select Committee.

10. The Committee received 3,645 submissions on the Bill. Employers and employer representative groups primarily supported the Bill. They considered the Bill provides greater certainty for businesses and removes barriers to effective management of businesses.

11. Unions, and most non-for-profit organisations, legal organisations, and individual submitters opposed the Bill. The main reason for opposition was that they thought the Bill did not provide sufficient employee protections or sufficiently address power imbalances.

12. I have considered the submissions and I am persuaded by some proposals to refine the Bill to further enhance labour market flexibility and reduce compliance costs. In particular, I propose changes to the gateway test for contractors and the income threshold for unjustified dismissal personal grievances. I am not seeking Cabinet agreement to any amendments regarding the removal of the 30-day rule or the Bill's changes to strengthen the consideration of and accountability for the employee's behaviour in the personal grievance process.

The gateway test for contractors

13. The Bill introduces a set of criteria that represent clear-cut characteristics of a contracting arrangement, known as the gateway test. This will give contracting parties a clearer and more efficient test to determine whether a worker is a contractor. The gateway test criteria are:

13.1 there is a written agreement that specifies the worker is an independent contractor (**Intention criterion**); and

13.2 the worker is not restricted from working for others (**Restriction criterion**); and

13.3 the worker is not required to be available to work certain times or days or for a minimum period (**Availability criterion**); or is able to sub-contract the work (although vetting can be required to ensure compliance with statutory obligations) (**Sub-contracting criterion**); and

13.4 the business does not terminate the arrangement for not accepting an additional task (**Termination criterion**).

14. In addition, the worker must be given a reasonable opportunity to seek independent advice before entering into the arrangement.

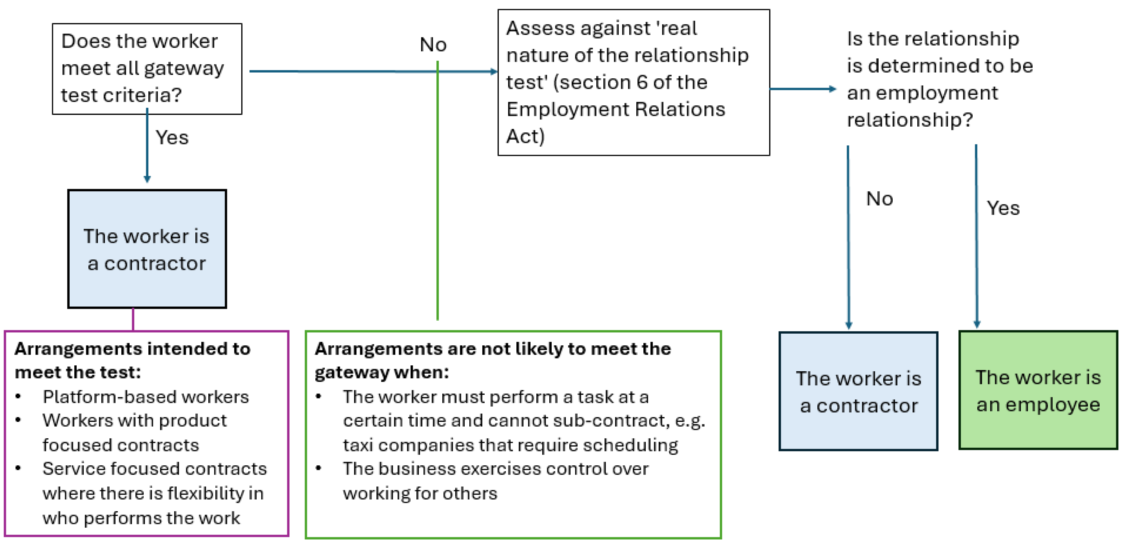
15. The gateway test is only intended to cover a subset of contracting arrangements, particularly for new and emerging business models, and is not meant to cover all existing arrangements. The reason for this is that this is the area with the greatest uncertainty, as opposed to more established forms of contracting.

16. The gateway test is designed to provide a streamlined test by specifying a smaller set of factors to be considered in determining whether a worker is a contractor. This set of factors has been balanced to give greater weight to the intention of the worker and the business when assessing the relationship.

17. Workers will still be considered a contractor if that is their preference, regardless of whether they would otherwise meet the gateway test, as the gateway or real nature of the relationship tests are only applied when a worker challenges their employment status.

18. Workers that challenge their employment status, could still be a contractor even if they do not meet the gateway test. If someone's working arrangements do not meet the gateway test, their employment status will be determined using the existing 'real nature of the relationship test' in section 6 of the Act. Failing to meet the gateway test will not increase the likelihood that a working arrangement is deemed an employment relationship. **Diagram 1** below sets out how this will work and who would meet the test.

Diagram 1: How the gateway test will work



Submitters' views on the gateway test

19. Employers and employer representative organisations largely supported the gateway test as it increases certainty of employment status and provides more flexibility for businesses and workers to agree to arrangements that suit them both. Individuals, unions, and not-for-profit organisations predominantly opposed the introduction of the gateway test, believing that it could be used to misclassify workers and reduce worker protections.

20. Some submitters (e.g. Uber, DiDi, BusinessNZ, the NZ Initiative) made suggestions to ensure that the gateway test can more clearly apply to newer forms of contracting arrangements, in particular those where the business provides a facilitation or agent role (e.g. some, but not all, platforms). DoorDash, on the other hand, supported the current drafting of the gateway test.

21. Submitters representing specific sectors (largely from the small passenger service and delivery industries) suggested broadening the gateway test to ensure taxi, shuttle, delivery services, and 'traditional contracting' arrangements would meet the gateway test.

22. I agree that some drafting changes could improve the gateway test's workability and to provide clarity on how it applies (detailed below).

23. I have opted not to make broader changes to the gateway test to enable it to cover a wider range of contracting arrangements, as many of the suggestions would undermine the effectiveness of the test in applying to clear-cut genuine contracting arrangements and reduce business certainty regarding whether their workers are likely to meet the gateway test. I disagree with some submitters' calls that the gateway test should be applied retrospectively.

I propose targeted amendments to the criteria in the gateway test

24. I propose targeted amendments to three criteria in the gateway test to ensure it works as intended (see Table 1 below). These amendments would improve the certainty for parties looking to comply with the gateway test and slightly widen the test, while mitigating risks of misclassification.

Table 1: Proposed amendments to the gateway test criteria

Current Bill	**Proposed change**	**Analysis**
Intention criterion: Require a written agreement that specifies the worker is an independent contractor.	Require a written agreement that **either** specifies the worker is an independent contractor **or not an employee.**	Reduces compliance issues or costs for businesses that do not categorise workers as 'independent contractors', e.g. platform models.

Restriction criterion: The worker cannot be restricted from performing work for another party, except while performing work for the business.	Specify that contracting someone to work the equivalent of full-time hours does not in itself constitute a restriction on working for others.	Reduces risk that courts might interpret full-time work as a de facto restriction on working for others, which provides more certainty to businesses that they would still comply with the gateway test. The worker would still need to be allowed to decide when to work or be able to sub-contract work to meet the gateway test – this mitigates any potential increase in misclassification.
Sub-contracting: Vetting of sub-contractors is only allowed where due diligence is necessary to meet statutory obligations.	Allow businesses to vet sub-contractors to ensure they have particular qualifications, where it is reasonable to require those qualifications given the nature of the work. Allow the business to require a criminal record check of a sub-contractor to ensure they do not have any relevant convictions where it is justified by the nature of the role.	This would allow arrangements to meet the gateway test where there is a justifiable expectation for a person with a particular qualification, or a clean criminal record, to complete the work (when the qualification is not a statutory requirement), but there remains flexibility in who performs the work. These changes may undermine the effectiveness of the criterion as there could be arguments over whether there is a 'justifiable expectation', but I judge this risk to be low as this criterion is linked to a clear-cut concept (i.e. a required qualification or criminal record check).

I am also making a technical change to the gateway test to ensure it covers facilitation models

25. Some submitters have raised concerns that in the gateway test the use of the wording "perform work for" could exclude some platform models from accessing the gateway test as they facilitate the provision of a service to a third party. That was clearly not what Cabinet intended. Officials will recommend to the Education and Workforce Committee that the wording of that provision be amended to reflect the intention that these types of arrangements should be able to access the gateway test.

Income threshold for unjustified dismissal personal grievances

26. The Bill introduces an income threshold for unjustified dismissal personal grievances. This will provide greater flexibility and certainty in the dismissal process for employees who have a significant impact on organisational performance and high bargaining power. The threshold is currently set at $180,000 per annum and will increase over time in line with average wages.

27. Some employers and employer representatives (e.g. BusinessNZ, Employers and Manufacturers Association) and other types of organisations (e.g. NZ Initiative and Grow Human Resources Limited) supported the threshold, considering it would enable greater business flexibility to manage high-income employees. However, some raised concerns about whether the threshold was effectively targeting employees with a significant impact on firm performance, primarily as employees who are not in senior leadership positions will be captured.

28. Supportive submitters (including employer representatives) made a range of suggestions to more effectively target the threshold, including increasing the level of the threshold and/or tying the threshold to occupations (i.e. senior managers). I believe it is a misunderstanding that the income threshold policy is only intended for senior managers, as opposed to all high impact positions. I have previously considered tying the threshold to particular occupations and decided this would be overly complex to implement, and that a focus on senior managers is too narrow.

29. Business South and Business Canterbury suggested lowering the threshold to $130,000 to ensure high-impact employees in small businesses or regional areas[1] are covered. BusinessNZ and RetailNZ recommended that the threshold be tied to the 95th percentile of income earners to apply only to individuals with genuine contractual and financial independence, which is currently $159,000.[2] The Employers and Manufacturers Association recommended a threshold of $240,000.

30. Unions, individuals, non-for-profit organisations, and legal organisations largely opposed the changes, due to concerns that workers would be able to be fired at will, and that this may lead to erosion of workers' rights.

31. A small number of employers/employer representatives also opposed the change. For example, the Meat Industry Association was concerned that the income threshold could result in new or existing employees seeking increased remuneration or extensive redundancy provisions to offset the risk of being dismissed. I expect that if employers have such concerns, this can be addressed by employers and employees agreeing to contract back into personal grievances provisions (which is an option that remains available).

I propose using a wider definition of remuneration for the income threshold

32. Currently, the threshold only considers an employee's base salary and wages and not wider forms of remuneration, such as bonuses and shares. Some legal organisations and RetailNZ commented that this definition excludes some high-income earners because of the structure of their remuneration. For example, an employee with a base salary of $160,000 and $25,000 of bonuses would be below the threshold.

33. I am persuaded that the current threshold is not equitable as it only includes some forms of remuneration. I am aware that such remuneration structures are common in

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[1] Census 2023 data shows that employees who earn over $180,000 are more likely to work in firms with more than 250 employees, and are more likely to live in Auckland or Wellington.

[2] Note that BusinessNZ also recommended that the income threshold should increase significantly.

start-ups and growing companies that could benefit from this policy, where agility is critical for success.

34. I therefore propose to change the definition of remuneration to include PAYE income payments made by the employer and include employee share schemes. This includes regular wages or salary, allowances, bonuses, and commissions. This aligns with the definitions in the Income Tax Act 2007.

35. I propose that this is calculated on the pay period immediately before an employee is notified of termination. I propose the calculation is made using the following principles:

    35.1 the calculation should be based on the remuneration that the employee received in the previous 52 weeks from their employer, whilst employed in the same role[3].

    35.2 the calculation is pro-rated to the number of weeks worked, where an employee has not been in paid employment with the employer, and in the same role, for 52 weeks.

36. This change will ensure all employees earning $180,000 or more will exceed the threshold, regardless of the form the remuneration takes. It will be more complex than only covering wages and salary, as it includes more complex forms of remuneration (e.g. shares). However, this complexity is reduced by relying on well-understood concepts (PAYE and employee share schemes).

37. There is a risk that the change adds complexity where an employee's remuneration fluctuates over and under the threshold (e.g. due to bonuses or overtime). Employers will need to assess an employee's remuneration prior to dismissing them to manage this risk, particularly where employees may be earning close to the threshold.

38. While it is difficult to estimate the precise impacts of the proposed change to widen the definition of remuneration, some assumptions can be made. Inland Revenue data already includes the wider definition of remuneration I propose. Using 2024 data from Inland Revenue, approximately 3.4% of employees in New Zealand earn over $180,000, according to this wider definition. If the threshold were to apply to salary and wages only, the threshold would capture less than 3.4% of employees.

Options for the level of the threshold

39. I originally recommended that Cabinet agree to an income threshold of $200,000, but Cabinet agreed to lower the threshold to $180,000 based on the desire to align with the top income tax rate [CAB-25-MIN-0189].

40. I understand there may be concerns that my proposal to broaden the definition of remuneration may capture a larger proportion of employees. I am therefore including an option in this paper to raise the income threshold to $200,000, which would cover 2.4% of employees (using the 2024 data). On balance, I believe this would be a

[3] Stating 'in the same role' ensures that, where an employee is promoted, only the remuneration since being promoted is considered.

suitable trade-off as those employers who support the policy may not be able to utilise it regardless of the level of the threshold if the scope is limited to salary only.

Rescinding the requirement to report back to Cabinet

41. Cabinet has previously agreed [CAB-25-MIN-0189] to further consider the Bill as reported back from Select Committee.

42. As this paper provides a summary of the Select Committee submissions and seeks agreement to the further policy proposals for inclusion in the Departmental Report, I propose that Cabinet rescind the decision to further consider the Bill after the Select Committee has reported back. This will ensure the Bill can be amended and progressed to second reading without delay.

Financial Implications

43. There are no financial implications associated with the proposals in this paper.

Cost-of-living Implications

44. There are not direct cost-of-living implications associated with the options.

Legislative Implications

45. Legislation is required to implement the gateway test and introduction of an income threshold for unjustified dismissal. The Employment Relations Amendment Bill (the Bill) is currently being considered by the Education and Workforce Select Committee, which is due to report back to Parliament on 24 December 2025.

46. The Bill will come into force the day after Royal assent. The Bill is a category 3 on the 2025 Legislation Programme (to be passed this year). On 25 August 2025, Cabinet agreed that the Bill will be passed in early 2026, to enable more time to consider the issues outlined in this paper.

47. The Bill, including the amendments proposed in this paper, will be binding on the Crown.

Impact Analysis

Regulatory Impact Statement

48. MBIE has prepared an updated Regulatory Impact Statement in relation to decisions sought in this paper on proposed amendments to the contractor gateway test.

49. A quality assurance panel from MBIE reviewed the Regulatory Impact Statement (RIS) prepared by MBIE's Employment Relations Policy team titled, "Providing greater certainty for contracting parties", on 25 September 2025. The Panel considers that the information and impact analysis summarised in the RIS **partially meets** the Quality Assurance criteria. The Panel considers that the RIS partially meets the requirements for completeness due to a lack of an evidence base underpinning the

policy proposals. This limitation was signalled in the previous RIS assessment, and we consider the information sufficient to enable decisions on the current proposals.

50. The Ministry for Regulation has determined that the proposals in relation to the income threshold are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [ECO-24-MIN-0265].

Climate Implications of Policy Assessment

51. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

52. The proposed changes will not have a significant impact on the population implications of introducing a gateway test and income threshold for unjustified dismissal, which were outlined in the “Providing greater certainty for contracting parties” and “Introducing an Income Threshold for Unjustified Dismissal” Cabinet papers.

Human Rights

53. The proposed changes will not have a significant impact on the human right implications of introducing a gateway test and income threshold for unjustified dismissal. These were outlined in the “Providing greater certainty for contracting parties” and “Introducing an Income Threshold for Unjustified Dismissal” Cabinet papers.

54. The Bill was assessed by the Ministry of Justice prior to introduction, which concluded the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

International obligations

55. International relations

56. Legal professional privilege

Use of external resources

57. No external resources were used in developing the proposals contained in this paper.

Consultation

58. The following agencies were consulted on this paper: Department of the Prime Minister and Cabinet, Ministry of Disabled People – Whaikaha, Ministry of Education, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Ministry of Health, Inland Revenue, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Regulation, Ministry of Social Development, Te Kawa Mataaho Public Service Commission, Te Puni Kōkiri, the Treasury, and the Ministry for Women.

Communications

59. The proposed introduction of a gateway test and income threshold for unjustified dismissal have already been announced. As the Bill is currently being considered by the Select Committee, I do not intend to make any announcements in relation to the decision.

Proactive Release

60. This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of final Cabinet decisions.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

Gateway test

1 agree to the following package of targeted changes to the gateway test to improve its certainty:

1.1 amend the **intention criterion** to require there is a written agreement that specifies that the worker is an independent contractor <u>or not an employee</u>

1.2 amend the **restriction criterion** to specify that contracting someone to work the equivalent of full-time hours does not in itself constitute a restriction on working for others

1.3 amend the **sub-contracting criterion** to allow businesses to require:

1.3.1 a vet of sub-contractors to ensure they have particular qualifications, where it is reasonable to require those qualifications given the nature of the work, and/or

1.3.2 a criminal record check to ensure the sub-contractor does not have any relevant convictions, where it is justified by the nature of the role

2 note that I intend to recommend the Select Committee make a technical change to the drafting of the gateway test to ensure it clearly applies in situations when the worker is not performing the work directly for the hiring business

Income threshold

3 agree that, for the purposes of the income threshold, income is defined as PAYE income payments and employee share schemes (as defined in the Income Tax Act 2007) received from the employer.

4 agree that an employee's remuneration, for the purposes of the threshold, is calculated on the pay period immediately before an employee is notified of termination.

5 agree that remuneration is calculated using the following principles:

5.1 the calculation should be based on the remuneration that the employee received in the previous 52 weeks from their employer, whilst employed in the same role

5.2 the calculation is pro-rated to the number of weeks worked, where an employee has not been in paid employment with the employer, and in the same role, for 52 weeks.

6 agree that the income threshold be initially set at either:

6.1 $180,000 per annum (as previously agreed by Cabinet, ECO-24-MIN-0265 refers); **OR**

6.2 $200,000 per annum (recommended).

Next steps

7 note the agreed changes to the Bill will be recommended to the Education and Workforce Committee via the departmental report.

8 agree to rescind the requirement to report back to Cabinet after the Select Committee reports the Bill back to the House.

Authorised for lodgement

Hon Brooke van Velden

Minister for Workplace Relations and Safety