Submission by

to the Employment and Workforce Select Committee

on the

Employment Relations Amendment Bill

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Business New Zealand Submission on the Employment Relations Amendment Bill

1. Executive Summary

1.1. BusinessNZ welcomes the opportunity to provide feedback on the Employment Relations Amendment Bill (the Bill). It wishes to appear before the committee to talk to its submission.

1.2. The Bill represents a positive step towards reducing regulatory burdens and addressing long-standing employer concerns around legal uncertainty, excessive compliance, and disproportionate exposure to personal grievance claims.

1.3. While we broadly support the Bill's direction, we raise concerns regarding the design and implementation of the proposed income threshold for unjustified dismissal claims. Our position on the Bill's key areas is summarised below:

1.3.1.1. *Specified Contractors*: We support the intent behind this proposal. However, we have concerns that, as presently drafted, the proposed change may still enable legal challenges as to status by "platform workers". We propose amendments to address this risk.

1.3.1.2. *Personal Grievance Reform:* We strongly support the proposed change. Denying remedies where serious misconduct occurs and allowing full discretion in remedy reduction is a fair and proportionate approach. These reforms better reflect employee accountability and should reduce strategic grievance claims. For further clarity, we also recommend defining "serious misconduct" and capping non-economic awards.

1.3.1.3. *Income Threshold for Unjustified Dismissal:* We are concerned that a simple threshold may create more issues than it solves. Furthermore, few if any countries that have introduced a threshold for personal grievances have adopted this approach. While we understand and agree with the policy intent, the proposed $180,000 threshold is too low and may create new legal risks. Ultimately the removal of access to the personal grievance process may drive high-income employees to pursue claims under discrimination or human rights legislation instead. We recommend lifting the threshold substantially, adopting definitional criteria for identifying affected roles, and supporting the opt-back-in mechanism with guidance and templates.

1.3.1.4. *Repeal of 30-Day Rule and Union Notification Requirements:* We strongly support this reform which should reduce employer compliance burdens and restore employee freedom of association, aligning New Zealand with international practice. We recommend clear employer guidance to assist implementation.

2. Recommendation

2.1. That the Bill proceed with the amendments proposed below.

3. Employment Relations Amendment Bill

3.1. Specified Contactor

3.1.1. General

3.1.1.1. The aim of clause 4 of the Bill ostensibly is to provide certainty to workers and businesses engaged in so-called platform work. However, as currently drafted, the clause risks being misinterpreted, leading to the possibility it may not have the intended effect.

3.1.1.2. Specifically, the Bill does not seem to recognise that platform work takes a variety of forms. Nor does it explicitly recognise that platform work is characterised by the use of automated decision-making mechanisms (which manifest as "apps") and their underlying algorithms.

3.1.1.3. We recommend adding recognition of the fact that work performed as a contractor may include work that is facilitated by an automated decision making mechanism as an alternative to work to being provided directly by the principal to the contract.

3.1.2. Defining platform work

3.1.2.1. Employment and contracting, defined contractually as, respectively, contracts of and for service have very different characteristics. One crucial distinction is that while employment is not generally transactional in nature, contracting almost always is.

3.1.2.2. Put simply the contracting environment may be regarded one in which something gets done in a specified time, to specified quality, for a specified price. This environment is often characterised by the term "gig work".

3.1.2.3. "Gig work" and "platform work" are terms often used interchangeably but can have slightly nuanced meanings.

3.1.2.4. Gig Work tends to be applied generically to temporary, freelance, or short-term jobs, often in the form of specific tasks or projects. These jobs are typically offered on a freelance basis, where individuals work for a specified period or until a particular task is completed.

3.1.2.5. Gig work can range from driving for a passenger service like Uber or Lyft, to freelance writing, graphic design, or any other task that can be performed on a freelance or short-term contract basis. It emphasizes

flexibility for both the worker and the employer/client, as gigs are usually temporary and can vary in terms of workload and duration.

3.1.2.6. Platform Work tends to be applied specifically to work that is mediated through digital platforms or online marketplaces. These platforms act as intermediaries connecting providers with consumers (clients or customers).

3.1.2.7. Platform work can encompass a wide range of activities, including passenger services such as Uber, DiDi or Lyft, product delivery services such as DoorDash, house cleaning or pet sitting services such as TaskRabbit, through to offering professional services such as programming or consulting through platforms like Upwork or Freelancer.

3.1.2.8. Platform work relies heavily on digital technology and online platforms to match providers with client service needs, tasks or projects, to manage transactions and provide ratings and reviews.

3.1.3. In a nutshell, while there is significant overlap between gig work and platform work, platform work specifically refers to gigs that are facilitated, managed, or mediated through online platforms, whereas gig work can encompass a broader range of freelance, temporary, or independent contract work.

3.1.4. These distinctions have been recognised internationally, most recently and most relevantly at the 113th International Labour Conference held in June 2025 in Geneva, Switzerland.

3.1.5. ILO discussion on Convention and Recommendation for platform work

3.1.5.1. In June 2025, ILO member states began a 2-year process to negotiate an international labour standard to cover platform work. During the 113th International Labour Conference, tripartite agreement was reached on the nature, definitions and scope of the proposed instruments.

3.1.5.2. *Nature of standard* – the forthcoming standard will be in the form of a Convention supplemented by a Recommendation. Conventions are international treaties that are binding on countries that ratify them. Recommendations are non-binding instruments intended to provide guidance on an issue, in this case to provide non-binding supplementary information to assist in implementing the convention.

3.1.5.3. *Scope of standard* – the Convention and Recommendation will apply to all digital labour platforms and all digital labour platform workers.

3.1.5.4. *Definitions* – the following definition were agreed.

3.1.5.5. "*Digital labour platform* means a legal person or, where applicable under national law, a natural person that, through digital technologies, using automated decision making systems, organises and/or facilitates work performed by persons for remuneration or payment, for the provision of

service, upon request of the recipient or requestor, regardless of whether that work is performed online or in a specific geographic location."

3.1.5.6. "*Digital platform worker* – means a means a person employed or engaged to work for the provision of service organised and/or facilitated by a digital; labour platform, for remuneration or payment, regardless of their classification of status in employment."

3.1.5.7. "*Intermediary* – means a legal person or, where applicable under national law, natural person that makes available the work of a digital platform worker.

3.1.5.8. "*Remuneration or payment* - means the amount due under national laws, regulations, collective agreements or contractual obligations, to a digital platform worker, according to their classification of status in employment, in exchange for the work performed. Remuneration does not include compensation for expenses or other costs incurred by the digital platform worker in carrying out their work."

3.1.6. While the standard is not finalised, it is clear there is growing international recognition of the role of automated decision-making platforms and processes and that these are central to the platform work environment. It is equally clear that the existence of such mechanisms can preclude employment status where a country deems this to be appropriate in their national circumstances.

3.1.7. However, the Bill does not contain any similar recognition of the role of automated decision-making processes or mechanisms.

3.1.8. Gateway test

3.1.8.1. Clause 4 of the Bill Provides that the definition of employee excludes a specified contractor.

3.1.8.2. Clause 4 of the Bill then defines that the term specified *contractor "means a natural person (person A) who has entered into an arrangement to perform work for another person (person B), and*

a. That arrangement includes a written agreement that specifies that person A is an independent contractor; and

b. Person A is not restricted from performing work for any other person, except while performing work for person B; and

c. Either

i. person A us not required to perform, or be available to perform, work for person B at a specified time or on a specified day or for a minimum period; or

ii. person A is allowed to subcontract the work for person B to another person (who may be required to undergo vetting by

person B to ensure compliance with any relevant statutory requirements before being subcontracted by person A); and

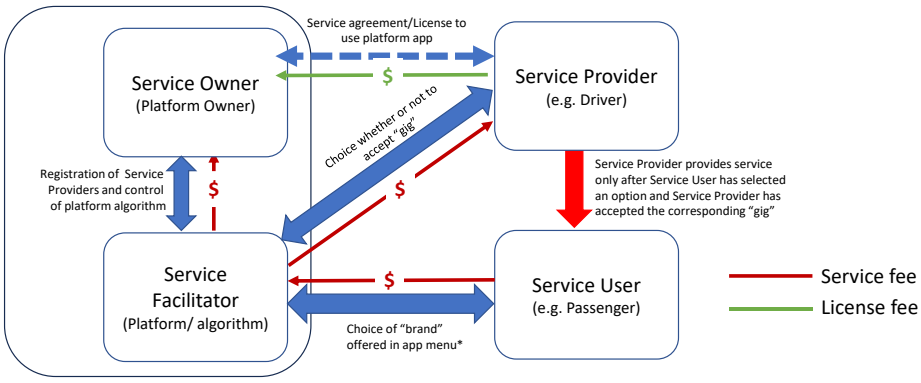
d. The arrangement does not terminate if person A declines any work offered to them by person B that is additional to the work that person A agreed to perform under the arrangement; and

e. Person A had a reasonable opportunity to seek independent advice before entering into the arrangement."

3.1.8.3. As is apparent from the wording of clause 4, the proposed gateway test is a measure of a relationship between person A and person B. The lack of statutory recognition of, or provision for, an intermediate and automated decision-making process makes it possible if not probable, that courts will interpret the gateway test in terms of a relationship between two persons, which is the very context in which the present s6 test applies. In other words, nothing will change.

3.1.8.4. However, the reality of platform work is different, as evidenced by the two main manifestations of such work; viz, the direct and indirect models, typified respectively by the passenger services and product delivery services examples. Set out below are generic representations of both.

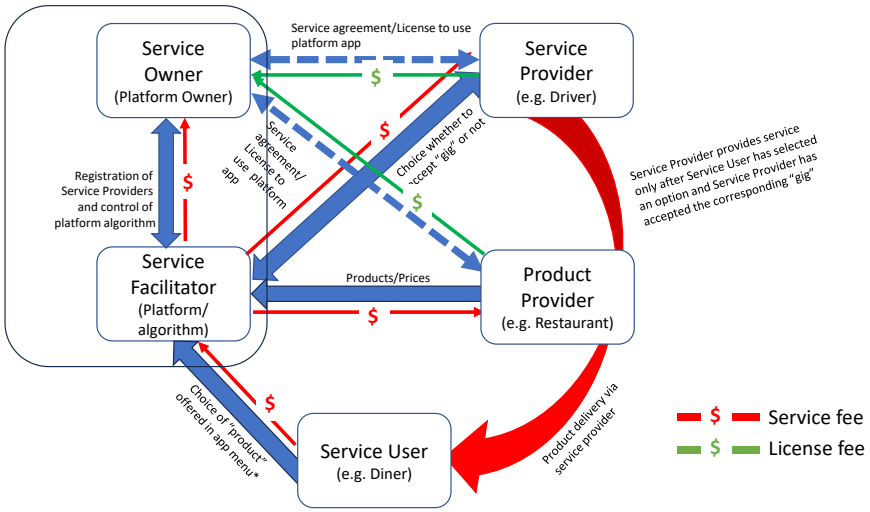
Generic Passenger Services Model



(see Appendix 1 for full size version of diagram)

3.1.8.5. The direct service (passenger services) model has a customer asking ("dialling the app") the platform for service. The platform identifies available service providers (e.g. drivers) and makes the request available for acceptance to those providers who are logged on to the app. A provider once having accepted the request is then put in contact with the customer to finalise arrangements if necessary. No physical interaction takes place between the customer, the service owner, or the service provider in the requesting or providing of the service.

Generic Product Delivery Service Model



(see Appendix 1 for full size version of diagram)

3.1.8.6. The indirect service (product delivery service) model has a customer asking ("dialling the app") the platform for delivery of a product made available in the app by product providers who wish (and have paid) to participate in the product delivery services delivery model. The app receives a request for a product from the customer, identifies the delivery option to logged on service providers (e.g. drivers) one of whom, having accepted the offer of work, collects the product and delivers it to the customer. Like the direct model, there is no direct interaction between the service owner, the product provider, the driver or the customer.

3.1.9. All interaction in the transactions exemplified by the passenger services and product delivery services models is in fact facilitated by the app, which operates within the parameters established by the service (app) owner. This feature distinguishes platform work from other forms of contracts for service in which the principal ("customer") and the contractor deal directly with each other, generally as the result of the principal having sought the contractor out directly.

3.1.10. It is the lack of recognition of the central and faciliatory role of the app in platform work that creates the risk that proposed clause 4 will be rendered ineffective.

3.1.11. Legislative interpretation

3.1.11.1. Technically at least the introduction of the gateway test does not alter the basis on which workers currently engaged as (non-specified) contractors may challenge their status.

3.1.11.2. However, it is possible that the existence of the gateway test may shift the focus of judicial interpretation of the test towards a more clinical view, one that would have more existing contractors classified as employees.

3.1.11.3. Put more simply, codifying a particular model of "authentic" contractor work creates the possibility that relationships falling short of those features may be employment. That signal can influence judicial reasoning, even under the current "totality" test.

3.1.11.4. It would therefore seem sensible that the Bill also include a provision to the effect that not passing the gateway test is not of itself determinative of the status of a worker.

3.1.12. Retrospective application

3.1.12.1. In July 2025, the Supreme Court heard an appeal against a Court of Appeal ruling that four Uber drivers are employees of Uber while they are logged on to the Uber app. The Supreme Court has yet to issue its judgement in the Uber case.

3.1.12.2. There is a concern that a decision by the Supreme Court that the four plaintiff workers are employees will have widespread retrospective effect, covering all other passenger services and product delivery services app-based drivers (and potentially other platform workers doing the same or similar work). This is estimated to be over 100,000 workers in the past 6 years.

3.1.12.3. While a decision to classify the four appellant drivers as employees would not have immediate application to remaining undecided cases, it would have considerable significance for courts deciding those cases, particularly if the Bill does not explicitly recognise the role of automated decision-making mechanisms inherent in platform work.

3.1.12.4. The Legislation Act, 2019 which governs the interpretation of statutes, states that legislation does not have retrospective effect (s12). That said, there have been a (very) small number of cases in which retroactive application of legislation has been considered. This appears to have been on the basis that Legislation Act protects any other Act being read as applying retrospectively *unless this is specifically provided for*. The recent introduction of amendments to the Equal Pay Act, while announced as having retrospective effective did not in fact make this explicit. Rather, section 4 of Schedule 1 to the Act requires all existing claims to transition to the new process, i.e. it extinguished unsettled claims and sent them back to the beginning of the new process.

3.1.12.5. Given the general proposition that legislation is not retrospective, consideration needs to be given to how to manage existing claims from platform workers (primarily passenger services and product delivery services drivers) whose applications to have their status changed to that of employee are yet to be heard.

3.1.12.6. Leaving aside the question of legislative enactment, court judgments may also either direct, or have the effect of requiring, that the judgment be applied retrospectively. In the employment context, this typically

involves situations where a plaintiff has been found to have been wrongfully denied a right or entitlement over a period. In the employment context, this is often in relation to wages or leave.

3.1.12.7. To illustrate, an employer who wrongfully underpaid wages and/or holiday pay to an employee could be ordered by the court to make good the underpayment for the length of time it had been underpaid (up to a maximum of six years). Or the court could just find that the employee had been wronged, making it implicit that the wrong must be put right.

3.1.12.8. However, the extent to which retrospectivity can be ordered by the courts is generally limited to the cited parties to the case. Indeed, the Supreme Court judgment granting Uber leave to appeal the Court of Appeal ruling on the same question states that the approved question of law for appeal is *"whether **the four Uber drivers** are employees in terms of s6 of the Employment Relations Act 2000."*

3.1.12.9. Thus, while Uber (and other) drivers generally may wish to argue that they are also employees, a favourable Supreme Court ruling could not be more widely applied until those workers not party to the present case have also had their status determined to be that of an employee. That requires a separate ruling, involving a class action or cases taken by individuals or groups.

3.1.13. ***Business New Zealand accordingly recommends that:***

3.1.13.1. the Bill also include a provision to the effect that not passing the gateway test is not of itself determinative of the status of a worker.

3.1.13.2. the Bill require that undecided claims under s6 of the Employment Relations Act be submitted for reconsideration under the terms of the gateway test.

3.1.13.3. employers be permitted to reclassify employees designated as such by the courts prior to enactment of the gateway test and who meet that test.

3.1.13.4. Clause 4 of the Bill be amended to recognise this critical element as follows:

In this section specified contractor "means a natural person (person A) who has entered into an arrangement to perform work for or facilitated by another person (person B), and

a. That arrangement includes a written agreement that specifies that person A is an independent contractor; and

b. Person A is not restricted from performing work for any other person, except while performing work for or facilitated by person B; and

c. Either

i. person A us not required to perform, or be available to perform, work for or facilitated by person B at a specified time or on a specified day or for a minimum period; or

ii. person A is allowed to subcontract the work for or facilitated by person B to another person (who may be required to undergo vetting by person B to ensure compliance with any relevant statutory requirements before being subcontracted by person A); and

d. The arrangement does not terminate if person A declines any work offered to them or facilitated by person B that is additional to the work that person A agreed to perform under the arrangement; and

e. Person A had a reasonable opportunity to seek independent advice before entering into the arrangement."

3.2. Remedies for personal grievances

3.2.1. BusinessNZ supports the proposed reforms to personal grievance remedies and the clarification of the test of justification under section 103A. These changes represent a long-overdue correction to an imbalance in the current system, where employers face disproportionate liability for dismissals—even where employee misconduct is clear—due to procedural flaws.

3.2.2. Currently, a statutory 50% cap limits the Employment Relations Authority's ability to reduce compensation where the employee contributed to the situation. Despite this, the average reduction in remedies has declined from 40% in 2013 to 22% in 2023, while average compensation awards have steadily increased. This imbalance has fuelled risk-averse decision-making, especially among SMEs, and, in our view, incentivised claims that may lack merit.

3.2.3. The Bill's proposals—allowing up to 100% reduction in remedies, removing reinstatement where serious misconduct is found, and shifting the focus to overall fairness—will better reflect the realities of workplace dynamics. Employers often report that reinstatement is unworkable where trust has been eroded and that minor procedural lapses should not undermine otherwise justified dismissals nor lead to inappropriate award of compensation.

3.2.4. The Bill also amends section 103A to refocus the test for justification on whether the employer's actions were fair and reasonable in the circumstances, allowing the Authority to give less weight to minor procedural defects. This

approach better reflects international standards and helps rebalance the emphasis on substance over process.

3.2.5. Employers routinely express frustration that even when serious misconduct is evident—such as theft, dishonesty, or harassment—they must still undertake exhaustive procedural steps to avoid liability. While due process, and the principles of natural justice remain essential, it is unreasonable for a dismissal to be found unjustified solely on the basis of a minor procedural error, particularly where the underlying misconduct is not in dispute. These changes refocus the test on whether the employee was treated fairly in substance, rather than mechanically assessing the size or nature of the procedural defect.

3.2.6. Internationally, jurisdictions such as Australia, the UK, and Canada offer useful parallels. The Fair Work Commission in Australia may reduce or deny compensation where misconduct is proven. UK employment tribunals apply the "Polkey" principle, allowing for reduction in remedies if dismissal was inevitable. Canada's "just cause" approach similarly balances process with substantive justification.

3.2.7. BusinessNZ accordingly recommends that the Bill be amended as follows:

3.2.7.1. Legislatively define "serious misconduct": This would promote consistency in the application of the law and assist both employers and adjudicators in applying the threshold reliably.

3.2.7.2. Cap non-economic damages at $25,000: This reflects both international benchmarks and New Zealand's current guidance, ensuring predictability in awards for hurt and humiliation.

3.2.7.3. Empower the Authority to award legal costs: Providing the Authority with discretion to award costs where a party unreasonably prolongs litigation or rejects fair settlement offers would discourage strategic or vexatious claims.

3.2.7.4. Publish MBIE-endorsed process checklists: Clear guidance for employers would help ensure procedural compliance and allow for a rebuttable presumption of fairness when employers act in good faith.

3.2.7.5. Clarify that reinstatement is inappropriate where the employee's conduct undermines trust and confidence: This supports business continuity and protects existing staff from disruption.

3.2.7.6. Allow for reduction or removal of remedies where the employer's decision was substantively justified despite minor procedural flaws: This balances the importance of fair process with the practical realities of workplace management.

3.2.8. These recommendations reflect BusinessNZ's strong belief that a fair and balanced system must consider both parties' behaviour and not penalise employers for technicalities when substantive justification exists.

3.3. Income Threshold for Unjustified Dismissal:

3.3.1. BusinessNZ supports the intent behind the proposed introduction of a threshold for personal grievances but is concerned that, as drafted, the bill will also have unintended consequences

3.3.2. We understand the intention is to remove an automatic right to personal grievances from persons in positions of significant importance to the direction and operation of a business. Typically, this would cover executive roles as well as some key technical roles. However, the Bill does not define "target" roles, simply a level of remuneration.

3.3.3. The rationale for excluding higher-income earners from unjustified dismissal protections appears to rest on the assumption that these individuals already have the means, legal support, and contractual leverage to protect their own interests. In our view, though, the $180,000 threshold is too low and may create new legal risks.

3.3.4. According to the most recent *wage and salary income* data for New Zealand, roughly 100,000 people earn at least $180,000. That equates to about 3.4% of New Zealand 2.91 million wage-and-salary earners employees.

3.3.5. The published data does not break down income by occupation or industry, but based on typical high-paying roles and broader labour market research, those earning NZ$180,000 or more are most likely to be found in senior and specialist positions in a variety of sectors, including:

Healthcare: specialist doctors, surgeons, medical consultants.

Legal and corporate services: senior lawyers (especially corporate lawyers), managing solicitors, partners in firms.

Finance & executive roles: CFOs, financial directors, senior analysts at large firms.

Technology and engineering: senior software architects, IT leads, engineering managers.

Aviation: experienced airline pilots (captains), especially on long-haul routes.

Consulting & management: high-level management consultants, project directors in construction/engineering who manage large teams/projects.

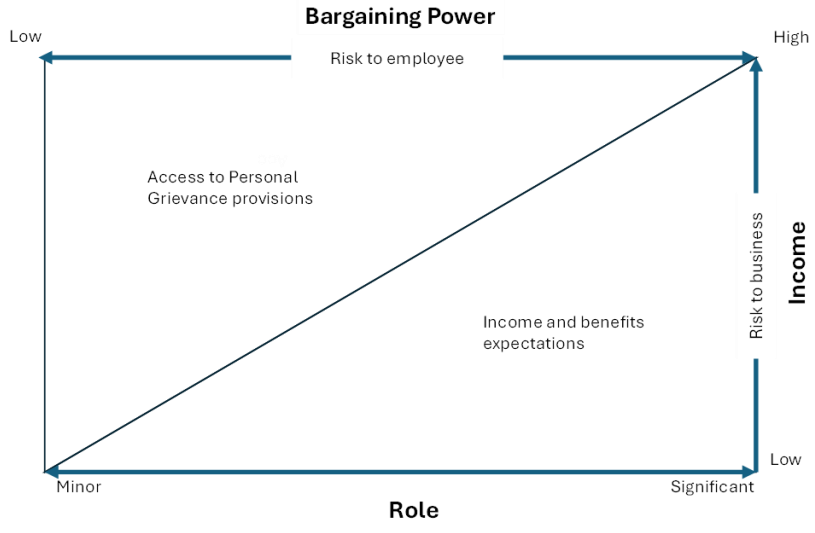
Other professions include senior executives (CEOs, general managers), partner-level roles in property and real estate, and highly-paid roles in niche sectors (e.g. petroleum engineers, data science leads).

3.3.6. However, while many of those listed above are likely to earn over the proposed threshold, many do not, depending on factors such as business size and wider market rates. A simple salary threshold therefore may create a "them and us" situation where people in the same or similar roles in an organisation are disparately treated in terms of their access to personal grievances.

3.3.7. This may lead to unintended and legally complex side effects. As highlighted in the Australian Federal Court's decision in *Antoinette Lattouf v ABC*, when traditional protections are restricted, individuals may seek redress through discrimination or human rights claims. In that case, the court found the dismissal was substantively based on political opinion—protected under the Fair Work Act—because the dismissal process was inadequately documented and policy grounds were not established.

3.3.8. We believe the same dynamic could emerge in New Zealand if the Bill is passed in its current form. Section 105 of the Employment Relations Act and the Human Rights Act 1993 already prohibit discrimination on the grounds of political opinion. If high-earning employees are statutorily excluded from raising unjustified dismissal claims, there is a risk they will reframe disputes as discriminatory terminations—especially in high-profile or values-based sectors like media, health, education, or government. This risks complicating dispute resolution, increasing the scope and cost of litigation, and moving cases from the Employment Relations Authority into the Human Rights Review Tribunal or the mainstream courts (in the form of common law claims of wrongful dismissal).

3.3.9. The diagram below illustrates this concern; a high paid employee with high bargaining power carries the greatest risk vis a vis access to personal grievance provisions. Consequently, they are likely to seek greater (and possibly disproportionate) compensatory recognition of this fact.



3.3.10. The opt-back-in provision is useful here but may not be widely used unless supported by model clauses and guidance. Ultimately, the opt out provision may simply create unnecessary extra work, particularly in cases where employees doing the same or similar work in a given business are treated disparately by the law.

3.3.11. Finally, while many high-income relationships already include bespoke dispute resolution clauses and negotiated exit terms, others do not. Employers and professionals frequently resolve issues without recourse to formal grievance processes, but statutory protections still provide an essential safety net when relationships break down unexpectedly or where bargaining power is overstated.

International practice[1]

3.3.12. International best practice generally avoids using salary alone as a bar to legal protection. When thresholds are used, they are tied to managerial authority, strategic autonomy, or contract classification. For instance:

3.3.12.1. *Australia* - Under the Fair Work Act 2009, employees earning above the high-income threshold (AUD $167,500 as of 2023–24) cannot bring an unfair dismissal claim, unless covered by an award or enterprise agreement. Those with individual flexibility agreements (IFAs) and high-level autonomy are assumed to have stronger bargaining power. Like NZ's proposed Bill, this is a blunt instrument that has generated criticism—e.g., in the *Lattouf* case—for failing to account for precarious or short-term roles despite high income.

3.3.12.2. *Singapore* - The Employment Act excludes managers and executives earning above SGD $4,500/month from certain protections (e.g., rest days, overtime). Jobs must be managerial or executive (i.e., with authority to hire/fire or make strategic decisions). Dismissal protections still apply under common law, but there are fewer procedural and statutory requirements. Here, the exclusion is tied directly to the job role—not income alone.

3.3.12.3. *United States* - U.S. employment is governed by at-will employment, but exemptions to minimum wage/overtime and some protections under the Fair Labor Standards Act (FLSA) are based on the "duties test" and salary level. Affected employees Must meet both a salary threshold (USD $684/week) and be employed in a bona fide executive, administrative, or professional capacity. Even when salary thresholds are used, job function is always required for exclusion from protection.

3.3.12.4. *Germany* - All employees generally have dismissal protection after six months, but executives have different rules. In particular, they must have genuine executive authority (e.g. hire/fire authority). Severance and notice periods can be altered by individual contract. Germany

[1] A comparative Table is attached at Appendix 2

combines functional role with procedural safeguards, rather than blunt income thresholds.

3.3.12.5. France - All employees are protected under the Labour Code, but executives have differentiated rights. They must have significant autonomy, be involved in high-level decision making, and earn at a high level. Dismissal still must follow just cause and fair procedure, even for executives. France limits procedural rights only where the role justifies it, never by salary alone.

3.3.12.6. Canada - In most provinces, employment standards apply broadly, but "dependent contractors", and senior executives may have different common-law entitlements. Courts assess bargaining power, nature of duties, and contract type. No blanket salary exclusion exists.

3.3.13. In summary, NZ's proposal to exclude dismissal-related personal grievances based solely on base salary > NZD $180k, without job-type consideration is out of step with jurisdictions like Germany, France, Canada. It more closely resembles Australia (which has faced criticism and legal challenges for this approach) and therefore risks disproportionately excluding specialists, contractors, or high-paid technical roles who lack genuine power or negotiating leverage.

3.3.14. *BusinessNZ accordingly makes the following recommendations:*

3.3.14.1. Increase the threshold significantly—ideally tied to the 95th percentile of income earners—to ensure it applies only to individuals with genuine contractual and financial independence.

3.3.14.2. Introduce role-based parameters to align with the income threshold. These could be based on job type, levels of autonomy and authority or hierarchical levels.

3.3.14.3. Promote opt-out clauses through MBIE-issued model language to support good faith contracting practices at the upper end of the labour market.

3.3.14.4. Issue transitional guidance and tools for updating existing employment contracts.

3.3.14.5. Consider whether a different, more targeted mechanism would better meet the policy objective—for example, a contractual opt-out with agreed terms, rather than a blanket exclusion.

3.4. Repeal of 30-Day Rule and Union Notification Requirements

3.4.1. BusinessNZ supports the proposed repeal of both the 30-day rule and the requirement for employers to notify unions about new employees covered by a collective agreement. These provisions have, for years, created friction in

workplaces, complicated hiring processes, and undermined the principle of voluntary unionism.

3.4.2. The 30-day rule obliges employers to place new employees—who may have no interest in joining a union—onto terms derived from a collective agreement if one is in force, even when the employee is not a union member. This requirement undermines the freedom of contract and disadvantages employers who wish to negotiate individualised terms with their staff from the outset. It also creates an artificial alignment between employee and union, irrespective of the individual's preferences. The practical consequence has often been a sense of coercion for new hires, reduced flexibility in setting terms and conditions, and added compliance burdens on employers.

3.4.3. Similarly, the current requirement for employers to notify unions of new hires who fall within the coverage of a collective agreement—even if those employees are not union members—raises serious concerns about privacy and workplace harmony. In many cases, these notifications have led to union outreach that was unsolicited and, at times, unwelcome by the employee. Employers report that this rule has contributed to confusion and suspicion in the employment relationship, especially in small workplaces where personal privacy is highly valued.

3.4.4. These provisions have not enhanced collective bargaining in a meaningful way but have instead imposed bureaucratic processes that reduce efficiency and strain employer-employee trust. Their removal restores a more even balance between freedom of association and employer obligations and reinforces the long-standing principle that union membership should be genuinely voluntary.

3.4.5. In our view, the removal of these provisions will:

3.4.5.1. Restore flexibility for employers to offer tailored terms of employment from day one.

3.4.5.2. Support employee autonomy and privacy by reducing unsolicited union contact.

3.4.5.3. Reduce compliance burdens and legal ambiguity around onboarding; and

3.4.5.4. Align with modern, consent-based approaches to workplace representation.

3.4.6. Another point that needs to be considered is that despite removing the 30 day test for the legislation, it remains possible for collective agreements to contain such provisions. A number of members have expressed concern that pressure nay be exerted on businesses to agree to such provisions under threat of industrial action. Given that the intent of the proposed change is to reduce unnecessary bureaucracy, it seems appropriate that collective agreements not be permitted to contain requirements for coverage of new employees, other

than when an employee voluntarily joins the union that is party to the collective agreement.

3.4.7. BusinessNZ accordingly recommends that:

3.4.7.1. the repeal of the "30-day rule" proceeds as proposed

3.4.7.2. that the Bill provide that a collective agreement may not contain provision that places a new employee under the aegis of an applicable collective agreement unless they voluntarily join the union that is party to the collective agreement.

3.4.7.3. MBIE be tasked with issuing clear guidance to employers on onboarding best practice following the removal of these obligations.

4. Summary of Recommendations

4.1. That the Bill proceed, amended as follows

Gateway test

4.1.1.1. the Bill also include a provision to the effect that not passing the gateway test is not of itself determinative of the status of a worker.

4.1.1.2. the Bill require that undecided claims under s6 of the Employment Relations Act be submitted for reconsideration under the terms of the gateway test.

4.1.1.3. employers be permitted to reclassify employees designated as such by the courts prior to enactment of the gateway test and who meet that test.

4.1.1.4. Clause 4 of the Bill be amended to recognise this critical element as follows:

In this section specified contractor "means a natural person (person A) who has entered into an arrangement to perform work for or facilitated by another person (person B), and

That arrangement includes a written agreement that specifies that person A is an independent contractor; and

a. Person A is not restricted from performing work for any other person, except while performing work for or facilitated by person B; and

b. Either

i. person A us not required to perform, or be available to perform, work for or facilitated by person B at a

specified time or on a specified day or for a minimum period; or

ii. person A is allowed to subcontract the work for or facilitated by person B to another person (who may be required to undergo vetting by person B to ensure compliance with any relevant statutory requirements before being subcontracted by person A); and

c. The arrangement does not terminate if person A declines any work offered to them or facilitated by person B that is additional to the work that person A agreed to perform under the arrangement; and

d. Person A had a reasonable opportunity to seek independent advice before entering into the arrangement."

Remedies for personal grievances

4.1.1.5. Legislatively define "serious misconduct": This would promote consistency in the application of the law and assist both employers and adjudicators in applying the threshold reliably.

4.1.1.6. Cap non-economic damages at $25,000: This reflects both international benchmarks and New Zealand's current guidance, ensuring predictability in awards for hurt and humiliation.

4.1.1.7. Empower the Authority to award legal costs: Providing the Authority with discretion to award costs where a party unreasonably prolongs litigation or rejects fair settlement offers would discourage strategic or vexatious claims.

4.1.1.8. Publish MBIE-endorsed process checklists: Clear guidance for employers would help ensure procedural compliance and allow for a rebuttable presumption of fairness when employers act in good faith.

4.1.1.9. Clarify that reinstatement is inappropriate where the employee's conduct undermines trust and confidence: This supports business continuity and protects existing staff from disruption.

4.1.1.10. Allow for reduction or removal of remedies where the employer's decision was substantively justified despite minor procedural flaws: This balances the importance of fair process with the practical realities of workplace management.

Threshold for personal grievances

4.1.1.11. Increase the threshold significantly—ideally tied to the 95th percentile of income earners—to ensure it applies only to individuals with genuine contractual and financial independence.

4.1.1.12. Introduce role-based parameters to align with the income threshold. These could be based on job type, levels of autonomy and authority or hierarchical levels.

4.1.1.13. Promote opt-out clauses through MBIE-issued model language to support good faith contracting practices at the upper end of the labour market.

4.1.1.14. Issue transitional guidance and tools for updating existing employment contracts.

4.1.1.15. Consider whether a different, more targeted mechanism would better meet the policy objective—for example, a contractual opt-out with agreed terms, rather than a blanket exclusion.

30 day Rule

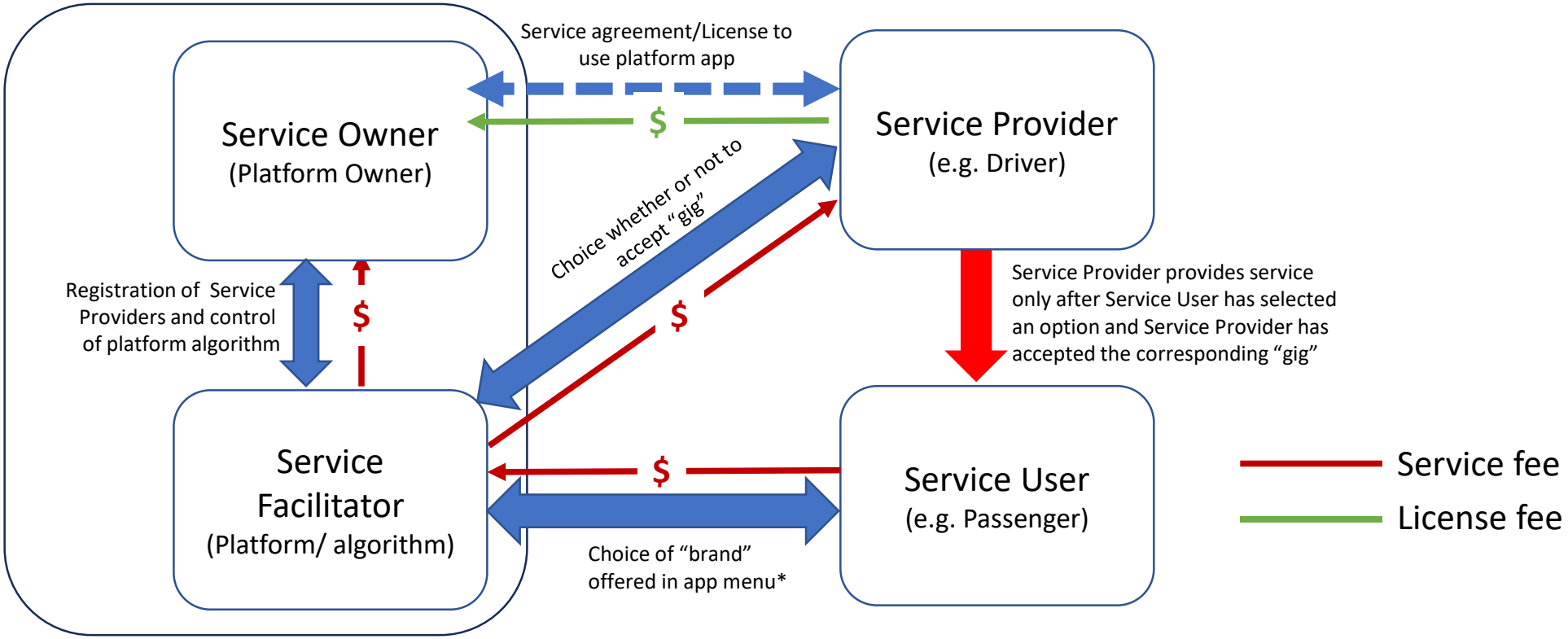
4.1.1.16. the repeal proceeds as proposed

4.1.1.17. that the Bill provide that a collective agreement may not contain provision that places a new employee under the aegis of an applicable collective agreement.

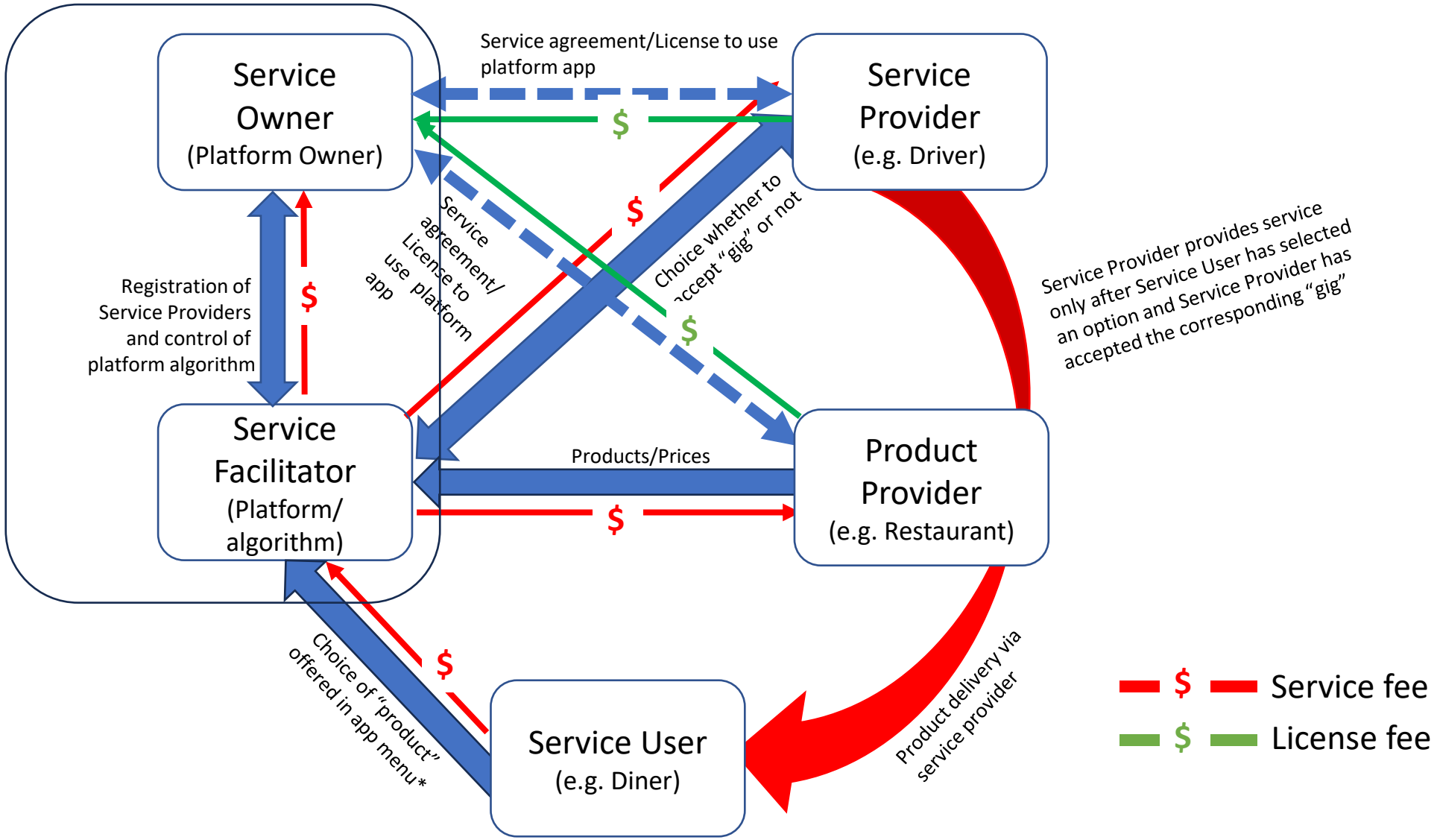
4.1.1.18. MBIE be tasked with issuing clear guidance to employers on onboarding best practice following the removal of these obligations.

Appendix 1

Generic Passenger Services Model



Generic Product Delivery Service Model



Appendix 2

Intrernational Comparison

Country	Income Threshold	Job-Type Parameters	Access to Dismissal Rights
Australia	✅ Yes	✅ Award/EA coverage, role not always clear	❌ High income = no unfair dismissal
Singapore	✅ Yes	✅ Must be managerial/executive	❌ Procedural protections limited
USA	✅ Yes	✅ Must meet "duties test"	✅ At-will, but FLSA protections vary
Germany	❌ No	✅ Only genuine executives excluded	✅ Broad protections otherwise
France	❌ No	✅ High-level role + autonomy	✅ Protections retained but adjusted
Canada	❌ No	✅ Functional role, contract nature	✅ No salary-based exclusion
NZ (Proposed)	✅ Yes	❌ Salary-only threshold, no job role test	❌ Personal grievance barred > $180k

The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups EMA, Business Central, Business Canterbury, and Business South
- BusinessNZ policy and advocacy services
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium-sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and Business at OECD (BIAC).