

Extract from 2425-0319 MBIE Workplace Relations and Safety Policy Weekly Report for the period from 13 September 2024 – 19 September 2024)

1.2. Personal grievances: confirming the contracting-in provision for the income threshold

Beth Goodwin, Manager Employment Relations Policy, Privacy of natural persons

In August 2024, you agreed to the key policy settings for the income threshold, including to automatically exclude employees earning over \$200,000 from raising an unjustified dismissal personal grievance [2425-0867 refers]. You indicated the automatic approach should include a contracting-in provision. We want to check we have understood what you meant.

We are drafting further policy advice on second order policy issues, due to your office on 26 September. You are on leave from the House in the week of 30 September. To assist with drafting the regulatory impact statement and Cabinet paper whilst you are on leave, we seek your indication of your preferred contracting in provision now, rather than the second order policy paper.

As can occur now, employees and employers above the threshold will be able to negotiate bespoke provisions regarding disputes, in individual or collective employment agreements. For example, employees and employers would be able to contractually agree to go to mediation and/or private arbitration before a potential dismissal or when facing employment issues. This ability to negotiate alternative arrangements could be interpreted as a contracting-in provision.

Without specific legislative amendment, employers and employees above the threshold would not be able to agree that an unjustified dismissal personal grievance could be raised through the *Employment Relations Act 2000*. A contracting-in provision in legislation could allow this to happen, meaning:

- employees are excluded from raising a claim by default, but
- employees and employers have the ability to agree that an unjustified dismissal claim could be raised.

We recommend adopting this approach of allowing parties to opt back in to the personal grievance system, as it allows the most flexibility for employees and employers to negotiate appropriate arrangements. If you choose not to, the default would continue to apply, where parties can negotiate bespoke arrangements.

Agree that the contracting-in provision for the income threshold for unjustified dismissals includes:	
<ul style="list-style-type: none">• only the ability to negotiate bespoke arrangements, OR	Yes / No / Discuss

<ul style="list-style-type: none">• the ability to agree that an unjustified dismissal claim could be raised under the Employment Relations Act 2000, as well as the ability to negotiate bespoke arrangements.	Yes / No / Discuss
Comments:	