

Legislative statement for the second reading of the Screen Industry Workers Bill

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

The Screen Industry Workers Bill creates a workplace relations regime for contractors in the screen industry. It is based on unanimous recommendations made by the Film Industry Working Group, representing a range of interests and organisations in the industry.

Background

In 2010, the Employment Relations Act 2000 was amended to remove film production workers from its definition of an “employee”. Regardless of the real nature of their working relationship, a film production worker is only an employee if their agreement or contract explicitly refers to them as such. Film production workers also cannot challenge their employment status in the courts. Because most workers in the industry are hired as contractors, they are excluded from the rights that employees have (eg to be paid the minimum wage and to bargain collectively).

In January 2018, the Government established the Film Industry Working Group (FIWG). The FIWG was asked to find a solution that would allow workers to bargain collectively, while also:

- Allowing workers to continue working as contractors if they wished,
- Providing certainty to encourage continued investment in New Zealand by production companies, and
- Maintaining competition between businesses offering film production services to promote a vibrant, strong and world-leading film industry.

In October 2018, the FIWG made their recommendations to the Government. The model they recommended was accepted by the Government in 2019, and is given effect in this Bill.

Overview of Screen Industry Workers Bill

Employment status of screen production workers

The Bill provides certainty about the employment status of screen production workers. Whether a screen production worker is a contractor or an employee will continue to be determined solely by the type of written agreement they have.

The Bill will apply to certain types of work on screen productions. It will cover people whose work is integral to the creation of a screen production, which includes films, various types of programmes and computer-generated games.

Requirements for individual contracts

The Bill introduces a duty of good faith for workplace relationships (eg those between a contractor and their engager). It means that parties to a workplace relationship must not mislead or deceive each other, or do anything that is likely to mislead or deceive each other.

All individual contracts must be in writing, and include the following terms:

- A term stating that parties must comply with their obligations under the Health and Safety at Work Act 2015 and the Human Rights Act 1993,
- The process by which workers can raise complaints about bullying, discrimination and harassment, and how these will be responded to by engagers,
- A plain language explanation of how disputes will be resolved,
- The notice period (if any) for either party to terminate the contract, and compensation (if any) to be paid to the worker if the contract is terminated by the engager.

In addition, engagers cannot terminate individual contracts in retaliation for workers raising a complaint of bullying, discrimination and harassment.

Collective bargaining

The Bill creates a two-tiered collective bargaining framework. This allows bargaining to occur across occupational groups, or within enterprises (eg single productions or companies).

During collective bargaining, parties are subject to a more detailed duty of good faith. This includes requirements to consider and respond to proposals made during bargaining, and a duty to conclude a collective contract.

Generally, the Commerce Act 1986 prohibits contractors from participating in collective bargaining, as it is considered a restrictive trade practice. Collective bargaining carried out under the Bill is exempt from sections 27 and 30 of the Commerce Act. This allows contractors in the screen industry to bargain collectively with their engagers. Despite this exemption, parties are prohibited from taking industrial action at all times.

Occupation-level bargaining

Occupation-level bargaining can be used to negotiate terms for any of the seven occupations defined in the Bill. At this level, bargaining takes place between worker organisations (ie unions and guilds) and engager organisations. The resulting collective contracts will set minimum terms for all work done by the specified occupation, regardless of whether those workers and their engagers are affiliated with the bargaining parties.

Bargaining can only be initiated if there is sufficient support. This is decided by the Employment Relations Authority following a process involving public submissions. Once parties have concluded bargaining, the proposed collective contract must be ratified by workers in coverage. It will then come into effect six months after ratification.

Enterprise-level bargaining

Unlike occupation-level bargaining, bargaining at the enterprise level takes place between an engager (eg a particular production, or a single company) and a worker organisation. Bargaining can only be initiated if all parties agree. The resulting collective contract will only apply to work done by members of the worker organisation that negotiated the collective contract. Non-members can opt in, if the collective contract allows for this, but otherwise will not be bound. All terms in an enterprise-level collective contract must be at least as

favourable to workers as the terms in any occupation-level collective contract that also applies to them.

Dispute resolution

The Bill provides a default dispute resolution system for problems relating to individual and collective contracts and collective bargaining. Under the Bill, parties in the industry can access free mediation services. They can also seek facilitation (during bargaining) and binding determinations by the Employment Relations Authority. For bargaining disputes that cannot otherwise be resolved, the Authority can fix terms in a collective contract.

Amendments recommended by Education and Workforce Committee

The Education and Workforce Committee examined the Bill in 2020 and recommended, by majority, that it be passed with amendments. The key amendments the committee recommended are as follows:

Individual contracts

The committee recommended strengthening the freedom of association protections and adding procedural requirement for engagers when making and varying individual contracts. These procedural requirements include advising workers they can seek independent advice on their contract, and giving them reasonable opportunity to do so. The committee also recommended any term in an agreement that prevents a worker from raising a complaint of bullying, discrimination or harassment be unenforceable.

Collective bargaining

The committee recommended that parties be permitted to apply to join occupation level bargaining that is underway. The committee also recommended that bargaining fees be prohibited in occupation-level collective contracts and allowed in enterprise-level collective contracts. The committee recommended a number of changes to streamline the process of getting an exemption from an occupation-level collective contract.

Dispute resolution

The committee recommended clarifying that the Bill's dispute resolution process is a default process for resolving disputes, and that worker organisations and engager organisations have a role in enforcing the collective contracts they have bargained. The committee also recommended that worker organisations and engager organisations be given the ability to bring proceedings on behalf of workers or engagers with consent.

Commencement

The Bill will come into force 28 days after enactment.

Upon commencement, all changes introduced by the Bill will take effect, except for:

- Individual contracts entered into before the commencement date. These contracts will have 12 months before their terms need to be amended to comply with the Bill.
- Individual contracts for a writer made more than five years before commencement and which include terms or conditions about intellectual property. These contracts will not have to be amended to include mandatory terms required by the Bill.