

Legislative statement for the third 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 screen production companies, and
- Maintaining competition between businesses offering screen production services to promote a vibrant, strong and world-leading screen 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 worker 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 requiring parties to 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 or refuse to renew individual contracts in retaliation for workers raising a complaint of bullying, discrimination or 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.

Occupational bargaining

Occupational 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 bargaining

Unlike occupational 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 made during committee of the whole House

Requirements for individual contracts

During committee stage, the Bill's duty of good faith was broadened to:

- All relationships between parties to the same collective contract, instead of only when they are bargaining, and
- All relationships between an engager and a worker organisation, instead of only when they are bargaining for an enterprise contract.

The Bill was amended to require terms in individual contracts to be better than terms in collective contracts on a term-by-term basis rather than in overall effect. A similar change was made in relation to enterprise contracts, whose terms have to be better than those in occupational contracts on a term-by-term basis.

Occupational bargaining

A process was added to the Bill to allow replacement signatory parties to be named to an occupational contract, if no signatory party remains on that side. This allows for variations to continue to be negotiated, and exemption applications to continue being processed.

The steps for obtaining an exemption from the terms of an occupational contract were streamlined.

Enterprise bargaining

The Bill was amended so that an enterprise contract whose terms have been fixed is treated as signed and ratified. This is different to occupational contracts, which still need to be ratified because they apply to all workers and engagers within coverage.

Miscellaneous provisions

Powers were added for the Employment Relations Authority when performing functions other than resolving disputes. The Bill also sets out the chief executive's functions under the legislation.

The Bill was also amended to require the Minister to begin a review before the fifth anniversary of commencement.

Commencement

The Bill will come into force three months after enactment. Clause 75, which allows regulations to be made under the Bill, will come into force the day after Royal assent.

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

- Individual contracts that were entered into before the commencement date. These contracts will have 12 months to include mandatory terms required by 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.