



## COVERSHEET

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|-------------------------------|----------------------------------------------------------------|-----------------------------|--------------------------------|
| <b>Minister</b>               | Hon Iain Lees-Galloway                                         | <b>Portfolio</b>            | Workplace Relations and Safety |
| <b>Title of Cabinet paper</b> | <b>Screen Industry Workers Bill: Approval for Introduction</b> | <b>Date to be published</b> | 27 March 2020                  |

### List of documents that have been proactively released

| <b>Date</b>      | <b>Title</b>                                                           | <b>Author</b>                                             |
|------------------|------------------------------------------------------------------------|-----------------------------------------------------------|
| 11 February 2020 | Cabinet paper: Screen Industry Workers Bill: Approval for Introduction | Office of the Minister for Workplace Relations and Safety |
| 11 February 2020 | Cabinet Legislation Committee: Minute of Decision (LEG-20-MIN-0010)    | Cabinet Office                                            |

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of:

- Constitutional conventions.

In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

## **Screen Industry Workers Bill: Approval for Introduction**

### **Proposal**

1. This paper seeks Cabinet's approval to introduce the Screen Industry Workers Bill. This Bill implements Government policy to create a workplace relations regime for contractors in the screen industry to allow them to bargain collectively.

### **Policy**

2. The Screen Industry Workers Bill gives effect to a June 2019 Cabinet decision to create a collective bargaining system for contractors working in the screen industry (CAB-19-MIN-0264).

### **Background**

3. Following changes to the Employment Relations Act 2000 in 2010 (known colloquially as the "Hobbit law"), the majority of workers in New Zealand's screen industry have been engaged as contractors. They cannot challenge their employment status, and are therefore excluded from our system of employment protections which includes the ability to bargain collectively.
4. In January 2018, the Government announced the formation of the Film Industry Working Group (FIWG). The FIWG was tasked with finding a way forward for the industry, which would continue to give production companies certainty about workers' employment status, while allowing workers to bargain collectively and keep working as contractors if they wished (CBC-17-MIN-0077). The FIWG comprised members from screen industry organisations (eg guilds and producer organisations), BusinessNZ and the New Zealand Council of Trade Unions.
5. The FIWG reported back to me in October 2018, and unanimously proposed a bespoke workplace relations system be created for the screen industry. A key element of this would be a collective bargaining framework.
6. In June 2019, Cabinet agreed to implement the FIWG's recommendations, with one change limiting the scope of the model recommended (CAB-19-MIN-0264).<sup>1</sup> I was delegated the authority to make decisions on any issues that arose during drafting, as long as they were consistent with the overall framework agreed by Cabinet. These decisions are detailed in the Annex to this paper.

1 The FIWG's recommendations applied to all screen production work. Cabinet instead decided the new model would apply to screen production work defined as films, serials, games and commercials.

### *Why a bill is required*

7. This Government has committed to restoring film production workers' right to bargain collectively (CBC-17-MIN-0077). At present, only employees can bargain collectively, using a framework set out in the Employment Relations Act. Contractors in the screen industry cannot bargain collectively in relation to services they provide in competition with each other. That is because this would likely amount to a breach of the prohibition on restrictive trade practices in Part 2 of the Commerce Act 1986.
8. Legislation is therefore needed to both:
  - 8.1. Allow collective bargaining by screen industry contractors for minimum terms and conditions of engagement, without a risk of parties breaching the Commerce Act, and
  - 8.2. Provide an enforceable framework for such bargaining, which is not covered by the Employment Relations Act.
9. While parties could apply for an authorisation from the Commerce Commission to bargain collectively without any accompanying legislative framework, I do not consider this a viable option. This is because an individual authorisation would probably be required each time a guild or union wanted to negotiate with a specific production. The authorisation process can be costly, with costs for applicants frequently exceeding \$150,000 when lawyers' and advisors' fees are taken into account. Furthermore, even if authorisation is granted, there is no guarantee that bargaining occurring through an authorisation would be conducted using collective bargaining rules (eg those that exist in employment law), or with recourse to specialist dispute resolution services.
10. It is also not possible to give effect to certain features of Cabinet's policy approval without legislation. Some examples are:
  - 10.1. This model needs to apply to "screen production workers", instead of "film production workers" as currently defined in the Employment Relations Act. The definition of screen production worker needs to be more nuanced and detailed to provide certainty to the industry, and reflect the impact of technology change in the industry.
  - 10.2. There need to be mandatory terms for individual contracts in the screen industry relating to termination of contract, as well as bullying, discrimination and harassment. Individual contracts will also need to comply with any applicable collective contracts for that particular type of work.
  - 10.3. A general good faith duty needs to be established preventing parties in the screen industry from doing anything to mislead or deceive one another, or that could mislead or deceive one another.
  - 10.4. The Employment Relations Authority needs to be given the jurisdiction to resolve contractual and bargaining disputes, and fix terms in collective contracts where parties have been unable to come to agreement between themselves.

- 10.5. To promote healthy and productive relationships, penalties need to be available for behaviour such as not including mandatory terms in individual contracts; entering into individual contracts that breach collective contracts; terminating a contract in retaliation for a worker attempting to enforce their rights; obstructing or delaying an Authority investigation; and breaching rules relating to workplace access.

#### *Relationship to other work underway*

11. When Cabinet approved the policy for this Bill, it noted that this could be seen to pre-empt other work, particularly on better protections for contractors and Fair Pay Agreements. To avoid potential confusion, the bargaining framework established by this Bill is self-contained. It reflects the screen industry's consensus on the best way forward for their industry, and has been designed with the screen industry's specific characteristics in mind.
12. I am currently consulting on better protections for contractors, and have recently closed consultation on the design of a Fair Pay Agreement system. Given the relatively early stage of these two projects, I recommend proceeding with this Bill now. There is no guarantee that the issues facing contractors in the screen industry will be addressed by either Fair Pay Agreements or the work on contractors more generally. Contractors in the screen industry are also in a unique position because of the Hobbit law, and their continuing inability to challenge their employment status.

#### **Key elements of the Screen Industry Workers Bill**

##### *Employment status of screen production workers*

13. The Screen Industry Workers Bill ensures continued certainty about the employment status of screen production workers. A screen production worker is an employee if they are party to a written employment agreement that states they are an employee; otherwise they are a contractor.
14. This differs from the general approach under the Employment Relations Act, in which employment status depends on the real nature of the relationship between parties and, if challenged, is determined on a case-by-case basis by either the Employment Relations Authority or the Employment Court.

##### *Rules for all individual contracts*

15. The Bill introduces the following rules for all individual contracts (eg those between a production company and a contractor to do screen production work) regardless of whether a collective contract exists for that type of work:
- 15.1. Duty of good faith: the Bill prohibits parties from misleading or deceiving one another, or doing anything that could mislead or deceive one another.<sup>2</sup>
- 15.2. Mandatory terms: the Bill requires all individual contracts to include a process by which complaints about bullying, discrimination and harassment can be

2 Note this is narrower than the general duty of good faith in employment relationships, as articulated in section 4 of the Employment Relations Act.

raised and responded to. The Bill also requires all individual contracts to specify the situations in which a contract may be terminated, any associated notice period, and whether any payment must be made by the engager to the worker when terminating a contract.

15.3. Prohibition on retaliatory termination: the Bill prevents engagers from terminating contracts in retaliation for a complaint of bullying, discrimination or harassment, or an attempt by workers to enforce the terms of their contracts.

15.4. Dispute resolution: while parties can decide how contractual disputes will be resolved, the Bill allows parties to access government-funded mediation services. The Bill also provides access to the Employment Relations Authority to resolve disputes.

16. If there is a relevant collective contract in force, the Bill prevents individual contracts from containing terms that are less favourable to the worker concerned than in any applicable occupation-level or enterprise-level collective contract.

#### *Collective bargaining under the Bill*

17. The Bill creates an industry-specific collective bargaining framework. Bargaining can occur at two levels: within occupational groups, or within enterprises (eg a single production). Worker organisations (including unions) and engager organisations need to be registered before participating in bargaining.<sup>3</sup>

18. The main bargaining level under the Bill will be the occupation level. Collective contracts negotiated at this level will cover all work done by a particular occupational group. The Bill categorises all screen production workers into several occupations. This list of occupations can be amended by Order in Council. Only one occupation-level collective agreement is allowed at any time for each group.

19. Occupation-level bargaining can only be initiated with the approval of the Employment Relations Authority. The Authority must decide whether there is sufficient support to initiate bargaining, and who the bargaining parties will be.

20. Occupation-level collective contracts are expected to set minimum terms, which can be improved on in individual contracts or enterprise-level collective contracts. The Bill provides a mechanism for parties to seek exemptions from the terms of an occupation-level collective contract in limited circumstances.

21. Enterprise-level bargaining under the Bill has some similarities to bargaining under the Employment Relations Act. Enterprise-level collective contracts are between an engager and a worker organisation. They cover workers who are members of a bargaining party, though coverage can be extended to non-members with the consent of all parties concerned. The terms of an enterprise-level collective contract must be at least as favourable to workers as those in any applicable occupation-level collective contract.

3 Engagers represent themselves in enterprise-level bargaining, though they can use the services of an engager organisation as bargaining agent if they wish (the engagers themselves still remain parties to the enterprise-level collective contract).

22. There are specific good faith duties that apply during all collective bargaining. These will largely resemble those in the Employment Relations Act. One key difference relates to the duty to conclude: under the Bill, once bargaining has been initiated, a collective contract must be concluded without exception.<sup>4</sup>
23. Industrial action is not allowed during collective bargaining. Instead, parties can use mediation or facilitation to assist in the case of a bargaining dispute. The Authority can also make a binding determination to resolve any bargaining dispute. However, if a dispute is about what a term in a collective contract should be, the Authority must use the Bill's final offer arbitration process to fix the term in question.
24. Collective contracts need to be ratified before they come into force. For occupation-level collective contracts, all workers within coverage can take part in a ratification vote, and a majority of votes cast need to be in favour of the collective contract for it to take effect. For enterprise-level collective contracts, ratification is by members of any worker organisation party to the collective contract. However, in greenfield situations, where workers within coverage have yet to be engaged by a production, the worker organisation can sign the collective contract without ratification.

*When provisions of the Bill take effect*

25. The Bill's provisions generally come into effect at commencement, which is 28 days after Royal assent. This includes the following:
  - 25.1. the manner in which the employment status of screen production workers is determined;
  - 25.2. the general duty of good faith, the prohibition on undue influence, and the prohibition on retaliatory termination of individual contracts;
  - 25.3. the requirement to have a written individual contract (for contracts entered into after commencement);
  - 25.4. the requirement to include certain mandatory terms in individual contracts (for contracts entered into after commencement);
  - 25.5. the exemption from the Commerce Act;
  - 25.6. the ability of engager and worker organisations to register as such;
  - 25.7. the ability to initiate collective bargaining;
  - 25.8. collective bargaining process rules (eg specific good faith obligations during collective bargaining, form and content requirements for a collective contract, ratification requirements);
  - 25.9. the ability of worker organisations to access workplaces using the Bill's provisions.

<sup>4</sup> Under the Employment Relations Act, parties must conclude a collective agreement unless there are genuine reasons, based on reasonable grounds, not to.

26. For individual contracts entered into before commencement, the requirement to include mandatory terms applies from one year after commencement.
27. Occupation-level collective contracts take effect six months after they are publicly notified by the chief executive of the Ministry of Business, Innovation and Employment (MBIE). This means their terms apply to relevant individual contracts six months after public notice. The exception is for individual contracts entered into before public notification: terms in occupation-level collective contracts apply to such individual contracts from one year after public notice, instead of six months.
28. Enterprise-level collective contracts take effect upon signature by parties. Parties can agree to delay commencement of these contracts, up to a maximum of six months.
29. This gives parties in the screen industry additional time to comply with new requirements. These could result from either the Bill itself (eg mandatory terms in individual contracts) or collective bargaining under the Bill. I do not expect many contracts will need to be varied: in 2017, only 2.7% of screen production jobs lasted more than a year.

#### *Potentially contentious aspects of the Screen Industry Workers Bill*

30. The Screen Industry Workers Bill reflects a significant development in New Zealand's industrial relations landscape. Today, only employees are protected by employment law, and can bargain collectively about their terms and conditions of employment. Instead of being subject to employment law, contractors are generally regulated by commercial and competition law. The Bill changes this by allowing contractors to bargain collectively with those who engage them, while remaining contractors. This balances the need for better protection for contractors in the screen industry, with their freedom to continue working as contractors.
31. The Bill introduces mandatory terms for individual contracts. This means every individual contract in the screen industry will need to include these terms, including contracts that have been entered into before the Bill's commencement. To avoid causing undue disruption to the industry, the Bill provides a 12-month period after commencement to allow time for contracts to be updated if necessary, and exempts historical copyright agreements<sup>5</sup> between engagers and writers from mandatory term requirements.
32. Some of the Bill's features engage the following domestic and international human rights issues: freedom of association, the right to strike, the voluntary nature of collective bargaining, and compulsory arbitration. These are discussed further at paragraph 37 onwards.
33. In broad terms, the Bill contains two types of provisions:
  - 33.1. Compulsory components: these are things that will change in the screen industry upon commencement. A new duty of good faith will apply to all contractual relationships. All contracts for screen production work will have to

5 Feedback from screen industry stakeholders is that these agreements are likely to be hard to identify and vary, because they are typically entered into several years before a project makes it to the production phase (and a significant proportion may not make it to production).

be in writing, and include mandatory terms (relating to bullying, discrimination and harassment; and termination of contract). All parties to contractual relationships in the screen industry will also be able to access government dispute resolution services.

- 33.2. Optional components: all of the Bill's collective bargaining provisions are technically optional. That is because they require parties in the screen industry to coordinate, and take positive steps (eg registering themselves, and applying to initiate occupation-level bargaining). The government's role in collective bargaining is providing an enforceable framework, and helping parties to resolve bargaining disputes. I have advised FIWG members that it is outside current government policy to fund parties to engage in collective bargaining. This means it is up to parties in the industry to decide whether they want to use the Bill's bargaining framework, noting any associated resourcing implications will need to be met by the parties involved.

### **Impact analysis**

34. The impact analysis requirements apply to the proposals being given effect through the Screen Industry Workers Bill, and a regulatory impact statement was submitted at the time that policy approval relating to the Bill was sought (CAB-19-MIN-0264).
35. MBIE's Regulatory Impact Analysis Review Panel reviewed the regulatory impact statement. It considered the information and analysis summarised in the regulatory impact statement met the criteria necessary for Ministers to make informed decisions on the proposals.

### **Compliance**

36. The Screen Industry Workers Bill complies with each of the following:
- 36.1. the principles of the Treaty of Waitangi;
  - 36.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (see paragraphs 37 – 41 below) and the Human Rights Act 1993;
  - 36.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper);
  - 36.4. the principles and guidelines set out in the Privacy Act 1993;
  - 36.5. relevant international standards and obligations (see paragraphs 42 – 46 below);
  - 36.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

*New Zealand Bill of Rights Act 1990*

37. The Bill engages several freedoms in the New Zealand Bill of Rights Act:
- 37.1. Section 17 (freedom of association) of the Bill of Rights Act is engaged by the Bill providing for the negotiation of occupation-level collective contracts, which will have universal coverage. This means they will apply to all work done by a specified occupation of workers, and those who engage such workers. Even if individual workers/engagers are not affiliated with the organisations that have negotiated the collective contracts, they will be bound by them.
  - 37.2. Sections 14 (freedom of expression) and 16 (freedom of peaceful assembly) of the Bill of Rights Act are engaged by the Bill's bar on industrial action during bargaining.
38. These features of the Bill's bargaining model were unanimously recommended by the FIWG, and reconfirmed as essential during consultation while drafting the Bill.
39. In relation to the universal coverage of occupation-level collective contracts:
- 39.1. Occupation-level collective contracts are intended to set minimum terms for various types of work in the screen industry. Without applying to all of a particular type of work, occupation-level collective contracts would not be able to have this effect. Unlike for employees, there are no minimum terms or standards relating to work done by contractors.
  - 39.2. The universal coverage of occupation-level collective contracts is also mitigated by several aspects of the Bill. Before bargaining can be initiated, the Authority must decide whether there is sufficient support for it on the initiating side. This involves public notice and a submissions process that allows all workers within coverage (or engagers, if an engager organisation seeks to initiate bargaining) to express their view on the intended bargaining. After bargaining, occupation-level collective contracts need to be ratified by workers before they can come into force. This ratification vote allows all workers—regardless of their union or guild membership—to have their say on whether the occupation-level collective contract should be signed.
  - 39.3. The Bill also requires all occupation-level collective contracts to allow for derogation in limited circumstances. If compliance with a term in an occupation-level collective contract would cause significant or unreasonable disruption or costs to a screen production, workers and their engagers can agree to deviate from minimum terms (except pay) set in the collective contract. This ensures wide coverage of occupation-level collective contracts, while providing flexibility if strict compliance would significantly impede screen production work.
40. In relation to the prohibition of industrial action:
- 40.1. This was recommended unanimously by the FIWG, due to the volatility and international mobility of the screen industry. Without such a prohibition, I

consider parties in the industry would be unlikely to use the Bill's bargaining framework at all.

40.2. I note that coordinated action by contractors to refuse work, or by companies to prevent workers from doing work, is likely to breach the Commerce Act's prohibitions on restrictive trade practices. That means the status quo is that contractors in the screen industry cannot strike, which is not changed by the Bill. However, I recognise the right to strike is an important corollary of freedom of association and the right to bargain collectively.

40.3. To balance these considerations, the Bill imposes what I consider the most limited restriction on the right to strike to achieve the desired outcome. It defines "industrial action" as a failure by screen production workers or their engagers to perform a contractual obligation, done during collective bargaining, with the intention of undermining or affecting the outcome of that bargaining. A person who breaches this prohibition is liable to a penalty imposed by the Employment Relations Authority.

40.4. Similar actions by screen production workers and engagers that do not occur during collective bargaining will not fall within the Bill's definition of industrial action. They will instead continue to be governed by contract law and provisions of the Commerce Act.

41. I therefore believe any limitation on the above freedoms is justified given the importance of the policy objective: allowing collective bargaining in an industry where it is currently prevented.

#### *International standards and obligations*

42. The Bill engages several international obligations relating to freedom of association, the right to strike, voluntary bargaining and compulsory arbitration.<sup>6</sup>

43. In relation to voluntary bargaining:

43.1. The Bill requires parties to conclude a collective contract, without exception, once bargaining has been initiated. The FIWG deliberately did not include an exception from this duty to conclude a collective contract.<sup>7</sup>

43.2. However, I consider the Bill's bargaining model to be voluntary. At the occupation level, organisations who do not want to be subject to the bargaining framework may choose not to register as worker or engager organisations under the Bill. A party that did not want to participate in bargaining would be able to de-register, and have no further role in

<sup>6</sup> These obligations are from the International Labour Organization's (ILO) Freedom of Association and Protection of the Right to Organise Convention 1948 (Convention No. 87); the ILO's Right to Organise and Collective Bargaining Convention 1949 (Convention No. 98); article 22 of the International Covenant on Civil and Political Rights 1966; and article 8 of the International Covenant on Economic, Social and Cultural Rights 1966. New Zealand has not ratified ILO Convention No. 87. However, because it is one of the ILO's fundamental conventions, we are expected to abide by its principles as a member state of the ILO.

<sup>7</sup> Under the Employment Relations Act, bargaining parties must conclude a collective agreement unless there is genuine reason, based on reasonable grounds, not to.

bargaining. At the enterprise level, all parties must consent before bargaining can even be initiated.

44. In relation to compulsory arbitration:

44.1. There is no compulsory arbitration in relation to enterprise-level bargaining. In relation to occupation-level bargaining, the Bill could be said to involve a form of compulsory arbitration, but this is intended to be a last resort when a dispute over a term is the only issue preventing parties from concluding a collective contract.

44.2. The Bill gives the Authority the power to fix a term in an occupation-level collective contract if bargaining parties cannot agree the term themselves. This power cannot be conferred by bargaining parties on anyone else. The Authority may only fix a term if satisfied that parties have attempted mediation and facilitated bargaining. The Authority may also only fix terms using a specified final offer arbitration process, meaning it has to choose one of the parties' proposals, rather than imposing a term of its own creation.

44.3. However, a party that did not want to go through this process could choose to de-register and lose their status as a worker or engager organisation, and remove themselves as a bargaining party. This means it is not strictly compulsory to participate in this form of arbitration.

45. In relation to freedom of association and the right to strike, my comments above on Bill of Rights Act issues also apply in respect of our international obligations relating to these matters.

46. Ultimately, this model is a novel one in New Zealand law. All care has been taken during drafting to minimise inconsistency with our international obligations, but it is not possible to completely eliminate all risks of inconsistency. That is because several key features of the model have been recommended by the FIWG, and are based on consensus among worker and engager organisations in the screen industry about the most appropriate framework for their industry. In any case, when considering international obligations, the Bill's reforms are preferable to the status quo, as noted in paragraph 41 above.

## Consultation

47. The following agencies were consulted on this paper and the Screen Industry Workers Bill: the Department of Prime Minister and Cabinet (Policy Advisory Group), Inland Revenue, the Ministry for Culture and Heritage, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Treasury.

48. All regulators and bodies who have (or may have) functions under the Bill have also been consulted. These are the Registrar of Unions, Employment Mediation Services, the Employment Relations Authority and the Employment Court.

49. The Commerce Commission was consulted on sections of the Bill which concern the Commerce Act.

50. FIWG members were consulted on policy detail during the drafting process.

## Binding on the Crown

51. In June 2019, Cabinet agreed the Screen Industry Workers Bill would be binding on the Crown (CAB-19-MIN-0264).

### Operation of the Official Information Act

52. One provision of the Bill, which is based on a similar section in the Employment Relations Act, limits the Official Information Act 1982.
53. The Bill requires collective contracts to be sent to MBIE after they are concluded. Occupation-level collective contracts will then be published on the MBIE website. Enterprise-level collective contracts will not be published, and will not be subject to the Official Information Act 1982. The information in them will only be used for statistical/analytical purposes.
54. The Office of the Ombudsman was consulted on this provision. The Chief Ombudsman's response was:

*I cannot see such justification for the information generated in this case to be excluded from the OIA, and it is not clear that the effect on the public's rights of access has been adequately considered. I believe that there are existing mechanisms, including withholding provisions under the OIA, which provide adequate protection of the relevant interests, in circumstances where that protection is warranted*

*In my view, there are no compelling reasons for the information generated to be excluded from the OIA. The OIA itself contains adequate protections (where they are required), and that is a better vehicle for assessing the status of information than endeavouring to exclude information per se in the legislation you are proposing.*

55. I have considered the Chief Ombudsman's feedback, and nevertheless consider the provision necessary. It is deliberately aligned with the Employment Relations Act and applies only to enterprise-level collective contracts. This ensures consistency in the treatment of collective agreements/contracts containing terms agreed between a company and its workers. Without this provision, I consider that firms may be reluctant to provide enterprise-level collective contracts to MBIE, because they would have no guarantee that commercially sensitive information would be kept in confidence.

## Allocation of decision-making powers

56. The Screen Industry Workers Bill allocates decision-making powers between the executive and the judiciary as follows:

| Executive                                                                                                                                                                                | Judiciary                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>Registering incorporated societies as either worker organisations or engager organisations (Registrar of Screen Industry Organisations).</li></ul> | <ul style="list-style-type: none"><li>Approving initiation of occupation-level collective bargaining (Employment Relations Authority).</li><li>Assessing draft occupation-level collective contracts for suitability for ratification</li></ul> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>(Employment Relations Authority).</p> <ul style="list-style-type: none"> <li>• Making binding decisions to resolve individual contractual disputes (Employment Relations Authority and Employment Court).</li> <li>• Making binding decisions to resolve bargaining disputes (Employment Relations Authority and Employment Court).</li> <li>• Fixing terms in collective contracts (Employment Relations Authority).</li> <li>• Reviewing decisions of the Registrar of Screen Industry Organisations or the Employment Relations Authority (Employment Court).</li> </ul> |
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57. Criteria relating to the qualifications and responsibilities of decision-makers, and the procedures that they follow, have been applied in determining the allocation of decision-making powers above.

#### **Associated regulations and other instruments**

58. Regulations are not needed to bring the Screen Industry Workers Bill into operation generally, but are required for the following components of the Bill:
- 58.1. to amend the Bill's list of occupational groups of screen production workers (this identifies the workers to whom occupation-level collective contracts, and the bargaining for those contracts, will apply);
  - 58.2. to prescribe requirements relating to the giving of public notice of any document or other matter under the Bill;
  - 58.3. in relation to applications to register as a worker or engager organisation: to prescribe the manner in which applications may be made, to prescribe any registration forms, and to prescribe documentation or information that the Registrar may request;
  - 58.4. in relation to applications to initiate occupation-level collective bargaining: to prescribe the manner in which applications may be made, minimum requirements that submissions must comply with (if they are intended to count towards establishing sufficient support for initiation), and to prescribe documentation or information that the Authority may request;
  - 58.5. to prescribe forms and other minimum requirements.
59. The Bill also allows regulations to provide for any other matters contemplated by the Bill, which are necessary for its administration or for giving it full effect.

## Definition of Minister/department

60. The Screen Industry Workers Bill will be administered by MBIE. The Bill defines “department” as the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act. The Bill also defines “chief executive” as the chief executive of that department. These definitions have been included in the Bill because of the specific functions given to the chief executive relating to the registration of worker and engager organisations, giving notice of signed occupation-level collective contracts, and as the repository of signed enterprise-level collective contracts.

## Commencement of legislation

61. The Screen Industry Workers Bill will come into force 28 days after Royal assent. Further information about when specific obligations under the Bill come into force is in paragraphs 25 – 29 above.

## Parliamentary stages

62. I intend to introduce the Screen Industry Workers Bill this month (ie February 2020), and depending on the availability of House time, will move first reading as soon as possible. Constitutional conventions
63. I propose the Bill be referred to the Education and Workforce Committee for a period of three months.

## Publicity

64. I intend to issue a press release when the Screen Industry Workers Bill is introduced.

## Proactive release

65. I intend to proactively release this paper within 30 business days, subject to any redaction as appropriate under the Official Information Act 1982.

## Recommendations

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

1. Constitutional conventions
2. note that the Bill creates a new workplace relations regime for contractors working in the screen industry that will allow them to bargain collectively;
3. approve the Screen Industry Workers Bill for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
4. agree that the Bill be introduced in February 2020;
5. agree that the Government propose the Bill be:

- 5.1. referred to the Education and Workforce Committee for consideration for a period of three months;
- 5.2. Constitutional conventions

Authorised for lodgement

Hon Iain Lees-Galloway  
Minister for Workplace Relations and Safety

PROACTIVELY RELEASED

## **Annex: Decisions made by the Minister for Workplace Relations and Safety during drafting**

### **Scope**

The Screen Industry Workers Bill will apply to contractors doing screen production work, with the following exclusions:

- news and current affairs programmes;
- training and instructional programmes;
- productions of live events;
- sports programmes;
- religious programmes;
- music and dance performances;
- variety programmes/shows,
- game shows;
- non-entertainment games;
- talk shows;
- recreation and leisure shows;
- amateur work;
- support services;
- work for a company that does not primarily supply screen productions;
- volunteer work.

### **Principles (as described in FIWG recommendations)**

Parties to a workplace relationship must not, whether directly or indirectly, do anything to mislead or deceive each other or do anything that is likely to mislead or deceive each other.

Individual contracts must contain terms about bullying, discrimination and harassment; and termination.

### **Regulator roles**

For occupation-level bargaining, the Employment Relations Authority will check bargaining parties' representativeness at initiation, and check collective contracts before ratification.

Collective contracts must be delivered to the chief executive of MBIE after being signed, and occupation-level collective contracts will be published online.

## **Collective bargaining (general)**

Organisations seeking to participate in collective bargaining have to meet certain organisational requirements, including that one of their objects is promoting their members' collective working interests.

## **Occupation-level collective bargaining**

The Bill will specify that occupation-level collective bargaining can occur in the following groups: composer, directors, game developers, technicians (post-production), technicians (production), performers and writers.

Before occupation-level bargaining can be initiated, there must be an application to the Employment Relations Authority. The Authority will check whether the conditions have been met for bargaining to be initiated and the representativeness of bargaining parties.

## **Enterprise-level collective bargaining**

Bargaining parties can decide coverage of enterprise-level collective contracts, but any non-members within coverage have to consent to be bound.

Greenfield agreements are possible for enterprise-level collective contracts.

The mandatory terms for enterprise-level collective contracts are the same as for occupation-level collective contracts except an exemptions clause is not required.

The contents of enterprise-level collective contracts do not need to be checked by the Authority before ratification.

## **Dispute resolution**

The thresholds to access facilitation (if applicable) and determinations by the Authority should be that sufficient efforts at lower-level resolution (ie mediation and facilitation if applicable) have failed.

Parties must attempt facilitation (if mediation is unsuccessful) before seeking a determination fixing terms of a collective contract.

The Authority can fix any terms in a collective contract, including non-mandatory terms. To do so, it must use final offer arbitration.

## **Workplace access**

A representative of a worker organisation can request access to a workplace for one or more of the purposes contained in the Bill, which includes recruitment of members.

The person in control of the workplace may only refuse entry if it would unreasonably impede screen production activities.