

Screen Industry Workers Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Screen Industry Workers Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Screen Industry Workers Bill is a Government bill that would create a new workplace relations regime for contractors working in the screen industry. It arises from the recommendations of the Film Industry Working Group. The new regime would replace the current arrangement for film industry workers that is set out in the Employment Relations Act 2000 (as amended in 2010).

The bill would set out which screen production workers are contractors. Engagers of workers would need to provide an individual contract to each worker, including mandatory terms as set out in the bill. The bill would also provide engagers and workers with access to a two-tier collective bargaining framework. Occupation-level bargaining would allow worker and engager organisations in the screen industry to collectively negotiate minimum standards for different occupational groups in the industry, as set out in the bill. Enterprise-level bargaining would allow collective contracts to be negotiated between an engager and one or more worker organisations for individuals at a specific enterprise, as long as the terms were the same or better than any existing occupation-level collective contract. The bill would set out supporting arrangements for the regime, including a dispute resolution process.

Proposed amendments

This commentary covers the main amendments we recommend by majority to the bill as introduced. We do not discuss all consequential, minor, or technical amendments.

We propose relocating some provisions within the bill without changing their substance.

Part 1—Preliminary provisions

Part 1 of the bill sets out provisions that cover the scope of the bill, the employment status of screen production workers, and interpretations of terms used throughout.

Prohibition on bullying, discrimination, and harassment

We recommend inserting clause 6A to expressly provide that a contract or arrangement must not prevent a screen production worker from raising a complaint of bullying, discrimination, or harassment. If a contract or arrangement did, it should not be enforceable. We recommend inserting clause 20(1AAA) so that any breaches by an engager would be liable for a penalty.

We have not recommended that the bill include a specific process for raising complaints about bullying, discrimination, or harassment. We were advised that further policy work would be required to determine how a single process fixed in legislation could apply. However, the bill would not prevent organisations in the industry from creating a standard process for incorporation into individual contracts.

Exemption from prohibition on restrictive trade practices

Sections 27 and 30 of the Commerce Act 1986 prohibit restrictive trade practices. Under general employment law, those sections restrict contractors from actions akin to collective bargaining. As introduced, clause 7 provides that these sections would not apply to any matter or thing authorised under this bill. This would allow the collective bargaining framework to operate for screen production workers who are contractors. We recommend clarifying that the matter or thing must be for the purposes of collective bargaining, or to give effect to a collective contract.

We note that clause 28 of the bill would expressly prohibit industrial action—as defined in that clause—during collective bargaining. We recommend amending clause 7 to make this clearer.

Interpretation provision

Clause 10 would define some terms used throughout the bill.

We recommend inserting a definition of “dispute”, to mean any dispute about an individual or collective contract, or other problem arising out of a workplace relationship or bargaining for a collective contract.

“Occupational group” is defined as a category of screen production worker specified in Schedule 3 of the bill. Schedule 3 sets out the descriptions of the occupational groups that can be subject to occupation-level bargaining, which could be amended by Order in Council. We propose amending the description of “game developer” in Schedule 3 to cover individuals who work on, or contribute to, the creation of computer-generated games, and who do not fall within the definition of other occupational groups in the schedule.

We recommend amending the definition of “workplace relationship” to take into account additional relationships possible under the bill. The inclusion of these additional relationships means that the duty to act in good faith would also apply to these relationships under clause 13.

Coverage for screen production workers

The bill would apply to screen production workers who work on certain types of screen productions. Clause 10 provides that the meaning of “screen production worker” is set out in clause 11. Two aspects of the bill would determine whether a person is a screen production worker covered by the bill. First, the person would need to be within the meaning of “screen production worker” set out in clause 11. Second, under clause 12, the screen production worker would need to be working on the types of screen production set out in Schedule 2.

Meaning of “screen production worker”

Clause 11(1) sets out that a “screen production worker” is an individual who is engaged to contribute to the creation of a screen production to which the bill applies, and works in New Zealand.

We consider that the intention of the bill is to treat an individual as working for another person even if the individual is providing their services through a third party; for example, if the individual worked for a company that was contracted by the other person. We recommend inserting clause 11(2A) to provide for such scenarios.

Clause 11 would exclude from “screen production worker” an individual who: only provides support services, is a volunteer, or is engaged to do the work by an entity that does not primarily engage in work creating screen productions. We recommend clarifying these exclusions, which we discuss below.

Exclusion of support services

As introduced, clause 11(2) provides that “support services” means accounting, auditing, management, representation, legal, advertising, or similar services that have a contributing value or interest that is peripheral to the actual creation of a screen production. We believe there could be uncertainty as to whether the peripheral contribution requirement applies to all the types of services listed, or just to the last item in the list: “similar services”. Some submitters suggested to us that there are specialist roles that fall within those listed service types that are not considered “support services” in some areas of the industry. Therefore, we consider that the “peripheral contribution” requirement should also apply to all of the listed support services. We recommend inserting new clause 11(4) to reflect this.

We also recommend expressly including “administration services” as a type of support service, if it has a peripheral contribution.

Exclusion of volunteers from coverage

As introduced, the definition of “volunteer” would be the same as that set out in the Employment Relations Act. However, we consider that this could be problematic as the term in the Act is defined relative to the definition of “employee”. We recommend inserting a definition of “volunteer” into clause 11. The intention is for the definition to be substantially similar to that in the Act. We propose it be defined as an individual who does work without reward and without expecting reward.

Screen productions to which the bill would apply

Clause 12 provides that the bill applies to some, but not all, types of screen productions. The types of screen productions are set out in Schedule 2 of the bill: clause 1 of Schedule 2 sets out the types of screen productions that the bill would apply to; and clause 2 of Schedule 2 sets out the types that would not be covered.

We recommend some changes to the types of screen productions that are covered:

- We recommend removing “computer generated games for educational, training, and advertising purposes” from the type of screen productions that are excluded, so that they are covered by the bill. We note that such a production could still be excluded from coverage under clause 11(1)(b)(iii) if the company producing it does not primarily engage in screen production work (which includes game development).
- As introduced, sports programme productions would be excluded from coverage. In clause 3 of Schedule 2, we recommend amending the definition of “sports programme” to include electronic sports (e-sports) programmes, so that those productions are also not covered by the bill.

New Part 1A—Freedom of association

We recommend inserting new Part 1A to set out provisions relating to freedom of association.

Undue influence

As introduced, clause 14 of the bill would prohibit any person from exerting undue influence on a screen production worker with the intent of affecting the worker’s membership of a worker organisation, participation in collective bargaining, or being a part of a collective contract. If a person breached the prohibition on undue influence, they would be liable to a penalty. We propose moving this provision to new clauses 12D and 12E.

We recommend expanding new clause 12D to provide two additional provisions:

- We recommend including in the new clause an express prohibition on any person exerting undue influence with the intention of inducing an individual to terminate any work because of that individual’s status as a member or non-member of a worker organisation.

- We recommend expressly prohibiting any person from exerting undue influence with the intention of inducing an individual, who is authorised to act on behalf of workers, not to act on their behalf or to cease to act on their behalf.

The bill would enable the imposition of a penalty for any instances where undue influence occurs. We propose clarifying that the parameters of “undue influence” under this clause could be informed by the common law interpretation of undue influence as it relates to the Employment Relations Act. We recommend inserting new clause 12E(2) to this effect.

Additional provisions about freedom of association

We note that the bill’s protections relating to freedom of association are not as comprehensive as those in the Employment Relations Act. This could affect the operation of the bill’s collective bargaining framework.

Therefore, we recommend inserting new Part 1A into the bill to set out rights to freedom of association to better align with those in Part 3 of the Employment Relations Act. Specifically:

- We recommend inserting new clause 12A to prohibit any contract, agreement, or other arrangement that requires a person to become, remain, cease to be, or not be a member of a worker organisation or engager organisation. This would be equivalent to section 8 of the Employment Relations Act.
- We recommend inserting new clause 12B to prohibit any contract, agreement, or other arrangement conferring preferential treatment on a person because they are (or are not) a member of a worker organisation or an engager organisation. We propose clarifying that this does not relate to a worker simply having different terms in an individual contract compared to other workers. Our proposed new clause would be equivalent to section 9 of the Employment Relations Act.
- We recommend inserting new clause 12C to expressly state that where there is any inconsistency with clauses 12A or 12B in a contract, agreement, or arrangement, the contract would not be enforceable to the extent that it is inconsistent.

Part 2—Workplace relationships and individual contracts

Part 2 contains two subparts. The first sets out a requirement for parties to act in good faith. The second subpart sets out matters relating to individual contracts between workers and engagers, such as the types of terms that must be contained in individual contracts.

Duty of good faith

Clause 13 sets out the requirement for parties to a workplace relationship to act in good faith. Parties must not do anything to mislead or deceive each other, or do anything that is likely to mislead or deceive each other.

We note that, later in the bill, clause 26 also sets out the requirement for collective bargaining to be carried out in good faith.

We recommend amending clause 13 to make it expressly clear that the duties imposed under clause 13 and clause 26 are a complete description of the duty of good faith as it relates to the workplace relationship between parties that are bargaining for a collective contract. We note that this duty is more limited than that found under the Employment Relations Act.

Subpart 2—Individual contracts

Procedural responsibilities on engager when parties are entering into an individual contract

We think that additional procedural requirements—akin to those found in the Employment Relations Act—should be included in the bill when parties are entering into individual contracts, or varying them. We recommend inserting new clause 16AAA to require engagers to: give workers a copy of the intended contract being negotiated; advise workers they are entitled to get independent advice about it; give workers a reasonable opportunity to get that advice; and consider any issues raised by workers and respond to them in good faith.

We also recommend that a penalty for not complying with the above be provided for under the bill. We recommend inserting clause 20(1AAB) accordingly.

Engager must provide a worker with an individual contract in writing

Clause 16 sets out the requirements for an individual contract between a screen production worker and their engager. The engager would be required to provide the worker with the contract in writing. We recommend clarifying that if an individual contract is varied, an updated version of the contract must be provided as soon as practicable after the variation is agreed to. We propose clarifying that any variations to an individual contract that relate to a collective contract are not subject to the above requirements.

Clause 16 would require the contract to address the mandatory terms in clause 17, and would also set out what must be contained in the individual contract if a collective contract also applied to the worker.

We recommend clarifying that a worker would be deemed to be engaged on the terms that are most favourable to them across any individual or collective contract that covers their work. If the worker is covered by a collective contract, the individual contract could contain provisions that are not provided for in the collective contract, as long as the terms do not have the effect of making the individual contract less favourable than the collective contract, and are not inconsistent with any exemptions under clause 33 (which we discuss later) or prohibited under clause 6A.

To reflect the above, we propose restructuring clause 16 and inserting new clause 16A.

Mandatory individual contract terms

As referred to above, clause 17 sets out the terms that must be addressed in an individual contract between a worker and an engager. We recommend inserting a requirement for the contract to contain a plain language explanation of the processes available for resolving disputes, including the processes set out in subpart 1 of Part 4 of the bill.

Prohibition on retaliatory termination of individual contracts

Clause 18 would prohibit an engager from terminating a worker's individual contract, if the decision to do so was motivated by the worker exercising any right or remedy available to the worker under their contract or this bill. Any breach by an employer would be subject to a penalty under clause 20(3). We recommend extending this prohibition to protect any worker who:

- exercises any power, right, authority, or remedy available to them under any enactment, not only this bill
- provides any information in relation to a complaint about bullying, discrimination, or harassment made by another individual.

Resolving disputes relating to individual contracts

As introduced, clause 19 provides that a dispute arising between a worker and an engager may be resolved by the parties through the dispute resolution process set out in subpart 1 of Part 4 of the bill.

We recommend clarifying that parties could mutually agree to resolve a dispute about an individual contract through any other process. However, if another process cannot be agreed, the process in subpart 1 of Part 4 must be the process used.

We also recommend amending the clause to provide that, during dispute resolution, a worker organisation could act on behalf of a worker, and an engager organisation could act on behalf of an engager.

We recommend clarifying that any legal action relating to an individual contract that could result in the imposition of a penalty could only be taken under the process set out in subpart 2 of Part 4.

Part 3—Collective bargaining

Part 3 of the bill sets out provisions to enable collective bargaining. It sets out the process for organisations to register as a worker organisation or an engager organisation. Collective bargaining would be possible at both the occupation level and the enterprise level.

Subpart 2—Matters applying to all collective bargaining*Good faith*

As mentioned earlier in our commentary, clause 26 sets out the requirement for parties to carry out collective bargaining in good faith. While we do not propose substan-

tive change to the intent of the provision, we recommend rewording clauses 26 and 27 to provide greater clarity about the nature of this obligation.

Industrial action prohibited during bargaining

Clause 28 would prohibit industrial action during bargaining. We recommend making it clear that this provision would not prevent workers from ceasing or refusing to carry out work for health and safety reasons set out in section 83 of the Health and Safety at Work Act 2015.

Terms contained in collective contracts

Clause 32 provides what terms must be set out in collective contracts. They include, for example, rates of pay, hours of work, and termination clauses.

We recommend inserting clause 32(2)(h) to include a requirement to set out the minimum procedural requirements for resolving disputes relating to an individual contract. We propose removing the requirement to set out in collective contracts a plain language explanation of the services available to resolve disputes, as we have proposed including that requirement in each individual contract.

Bargaining fees

Under the Employment Relations Act, collective agreements can include bargaining fee clauses which enable non-members of unions to have an individual contract with the same terms and conditions as a collective agreement, if they pay a bargaining fee to the union. The bargaining fee cannot be more than the union fee.

As introduced, the bill would not prohibit bargaining fee clauses being included in collective contracts (both at the occupation level and enterprise level).

Under the bill, occupation-level collective contracts would have universal coverage to all workers in the occupational group. Workers would not have a choice as to whether they are covered by the occupation-level collective contract, and therefore would be universally required to pay a bargaining fee if the occupation-level collective contract required one. On the other hand, enterprise-level collective contracts would not set universal minimum standards, and so any bargaining fee clause could be decided by the bargaining parties.

We recommend inserting clause 32A to regulate when and how bargaining fees could apply under the bill. In our proposed clause, subclause (2) would specify that occupation-level collective contracts could not include bargaining fee terms. Subclause (3) would set out how bargaining fee terms could be included in enterprise-level collective contracts. A bargaining fee could only apply if a non-member worker consented to being covered by the collective contract, as would be required under clause 54(2) of the bill. The fee should not be more than the lowest fee that the non-member worker would be required to pay if they were a member of a worker organisation that was a signatory party to the contract.

Minimum and maximum duration of collective contracts

As introduced, clause 34 sets out the minimum and maximum duration of collective contracts. We propose moving this provision to new clause 32B.

Enterprise-level collective contracts would expire on the date specified in the contract, which must be between 3 and 6 years after the contract commenced. However, we recommend clarifying that, in the case of an enterprise-level collective contract, the contract would be treated as expired if all of the work of all of the workers covered by the contract was completed.

Collective contracts must be sent to chief executive

As introduced, clause 35 provides that parties would be required to send a copy of a collective contract to the chief executive of the department responsible for administering the Act. We propose moving this provision to new clause 32C. We consider that, for occupation-level collective contracts, the worker organisation that initiated bargaining should be responsible for sending the contract to the chief executive, and should also be required to include a statement about the ratification of the contract. The statement should contain information about the number of votes cast, and how many voted for and against. We recommend inserting new clause 32C(1)(b) accordingly.

Variations to collective contracts

Clause 46 would require draft occupation-level collective contracts to be assessed by the Employment Relations Authority for suitability for ratification. Workers in the occupational group covered by the draft contract would then need to ratify it in accordance with clause 47. We consider that variations to occupation-level collective contracts should also be assessed by the Authority and ratified by the occupational group workers. We recommend inserting clause 32D(2) and (3) accordingly.

Clause 53 would require enterprise-level collective contracts to be ratified by the organisation's workers that are covered by the contract. We consider that any variations should also be ratified. We recommend inserting clause 32D(4) and (5) accordingly.

We note that variations are distinct from exemptions, which we discuss below.

Exemptions from terms of occupation-level collective contracts

Clause 32(3)(c), which we propose rewording, would require occupation-level collective contracts to include a term that authorised exemptions to the terms of the contract. An exemption would mean that an engager could enter into individual contracts (or vary existing ones) where the terms are less favourable than those in an applicable occupation-level collective contract.

Clause 33 sets out the requirements for an exemption to be permitted under the bill. As introduced, an exemption could be permitted if the following criteria are met:

- the term from which an exemption is being sought relates to a specific screen production

- an exemption would not allow less favourable terms relating to the rates payable under the collective contract
- complying with the term would result in significant or unreasonable disruption to the production, or a significant or unreasonable increase in costs.

We recommend that the latter criteria be amended to remove “or unreasonable”. We consider this phrase unnecessary when used alongside the phrase “significant”.

Parties to an individual contract affected by the exemption must consent to the exemption before it applies to the individual contract. We recommend requiring that, before the parties consent, the engager must have: told the worker they are entitled to seek independent advice; given the worker a reasonable opportunity to do so; considered any issues raised by the worker; and responded to them in good faith.

We also recommend providing that, if work on the production has already begun, parties should be able to agree to an exemption verbally. However, the engager should be required to amend the worker’s individual contract in writing as soon as practicable. We recommend inserting a new clause 33(3) accordingly.

In clause 33 as introduced, if the work to which the exemption relates has not yet begun, the engager must seek the consent of all signatory parties to the collective contract. If the work to which the exemption relates has already begun, all signatory parties of the occupation-level collective contract must be notified as soon as possible after the exemption has been agreed. We recommend that this be amended so that, in situations where work has not begun, the consent of all signatory parties to the occupation-level collective contract must be obtained before the exemption can be included in a worker’s individual contract.

We also recommend inserting clause 33A to make any breach of clause 33 by an engager liable to a penalty.

Enforcement of collective contracts

We recommend inserting clause 35A to stipulate, for the avoidance of doubt, that worker or engager organisations that are signatory parties to a collective contract could enforce the contract. This would make it clear that those organisations could bring proceedings on behalf of their respective workers or engagers (assuming they consented to it).

Resolution of disputes relating to collective contracts

As introduced, clause 56 sets out general matters relating to dispute resolution. We propose incorporating that provision into new clauses 19 and 35B. We recommend that new clause 35B clarify that the dispute resolution process set out in the bill would apply as a default for resolving disputes relating to collective contracts. However, other dispute resolution processes could apply, if the parties agree.

However, we also recommend clarifying that the dispute resolution process under Part 4 of the bill must be used for fixing a term in an occupation-level collective contract that is preventing the concluding of the bargaining.

Subpart 3—Matters applying to bargaining for occupation-level collective contracts

Worker organisations must state that voters supported initiating bargaining

Under clause 37, a worker organisation or an engager organisation would need to apply to the Authority for approval to initiate bargaining for an occupation-level collective contract. Subclause (2) sets out what information must accompany such an application. As introduced, an organisation would be required to state that a simple majority of its members voted to initiate collective bargaining. We recommend clarifying that it must be stated that, of the members who voted, a simple majority voted in favour of the organisation initiating bargaining.

Bargaining parties to occupation-level collective contracts

Clause 41 sets out the nature of the organisations that would be deemed to be bargaining parties to an occupation-level collective contract. Clause 45, which we propose moving to new clause 43A, provides that, if the Authority approves an application by an organisation to initiate bargaining, then that applicant must be the party that initiates bargaining.

Clause 44 sets out the circumstances in which the Authority could remove an organisation as a bargaining party. We recommend amending the clause to clarify that it applies after bargaining has been initiated. We note that this clause is distinct from clause 41, which allows the Authority to excuse an organisation from being deemed to be a bargaining party.

We consider that organisations that were not identified as a bargaining party during the application process, but which have members within coverage of the proposed collective contract, should be able to apply to the Authority to join bargaining. We recommend inserting new clause 44A to set out a process for such an application. When making a decision, the Authority should be satisfied that:

- allowing the organisation to join bargaining would not undermine the bargaining taking place
- a substantial number, or distinct class, of workers or engagers would not have their interests represented if the organisation was not part of bargaining.

Authority assesses the draft occupation-level collective contract

Once parties have agreed the terms of a proposed occupation-level collective contract, the draft contract must be submitted to the Authority. Clause 46 sets out that the Authority must approve the draft if it is satisfied that it complies with the form and content requirements set out in clause 31. We recommend inserting clause 46(7) to specify that the Authority's decision on whether the draft is appropriate to be put for ratification is conclusive. We note that parties would be able to resubmit revised drafts.

Subpart 4—Matters applying to bargaining for enterprise-level collective contracts

Consent to enterprise-level bargaining cannot be withdrawn once bargaining is initiated

Clause 51 provides that bargaining for an enterprise-level collective contract is initiated only when all parties that receive the bargaining notice consent in writing within the stipulated timeframe. We recommend that the bill specify that bargaining parties are prohibited from withdrawing their consent to bargaining an enterprise-level collective contract once bargaining has been initiated. We recommend inserting clause 51A accordingly.

Screen production worker who is subject to two enterprise-level collective contracts

Clause 54 of the bill sets out the circumstances in which workers and engagers are covered by an enterprise-level collective contract.

The regime under the bill could mean that a screen production worker is covered by more than one enterprise-level collective contract. For example, the worker could be a member of two worker organisations that are each signatory to separate enterprise-level collective contracts covering the same work. We recommend that, where a worker is covered by more than one enterprise-level collective contract, the worker can choose which contract applies to them. We recommend inserting clause 54A accordingly.

Part 4—Dispute resolution, challenges, reviews, penalties, and offences

Subpart 1 of Part 4 sets out the dispute resolution process that would be provided for under this legislation.

Facilitated bargaining and final offer arbitration

Clause 58 provides that facilitation with a member of the Authority would be available to parties to resolve a dispute relating to bargaining. If there was a standstill over one term that was preventing agreement to a contract, clause 58(3) provides that parties are required to have complied with their duty of good faith under clause 26 in order for the Authority to use facilitation and final offer arbitration to fix a term in a collective contract. We do not think that it is necessary to include a requirement for parties to have acted in good faith in order for the Authority to be able to provide facilitation and final offer arbitration to the parties in such a situation. We recommend amending clause 58 accordingly.

Recovery of penalties

Clause 62 sets out that the Employment Relations Authority would have jurisdiction to deal with all actions for the recovery of penalties for any breaches of provisions in this legislation.

In clause 63(2), paragraphs (a) to (d) set out who could bring an action in the Authority for the recovery of a penalty, and in what circumstances. We recommend inserting paragraph (e) to provide that a worker organisation or an engager organisation could bring an action on behalf of any of the persons referred to in paragraphs (a) to (d) with their consent.

Part 5—Miscellaneous provisions and amendments to other Acts

Part 5 of the bill contains provisions that address access to the workplace by worker organisations, the role of the Registrar of Screen Industry Organisations, and some consequential amendments to the Employment Relations Act.

We propose some amendments to the provisions relating to access to the workplace.

Access to workplaces

Clause 66 sets out the purposes for which a representative of a worker organisation can enter a workplace. Clause 67(1) would enable the representative to enter a workplace if they have requested the consent of the person in control of the workplace. We recommend setting out in those clauses that the representative must obtain the consent of the person in control of the workplace.

Clause 67(2) sets out the only reasons that the person in control of the workplace can refuse consent. One of those reasons, in paragraph (b), is that the entry would unreasonably impede screen production to the extent it would prevent production or require it to be temporarily discontinued. We recommend inserting a requirement that, for entry to be refused, the impediment must not be able to be overcome by imposing conditions on entry under clause 68(2) when each request is made.

National Party minority view

National Party members wish to note that they support some aspects of the bill, such as provisions to improve protections for workers against bullying and harassment, freedom of association protections, and setting clear standards for employment contracts in the industry.

However, National Party members have concerns that the bill would create a less flexible labour market and strengthen union power beyond what is appropriate. This concern comes from a fundamental belief that individual workers and businesses should be able to agree their own terms—the right to which would be removed by the occupation-level collective contracts provided for in the bill. As such, the National Party opposes the bill.

We heard submissions detailing the various challenges in the industry. However, National Party members do not agree that the primary changes proposed in this bill provide the right solution to help grow the sector and improve pay for workers.

National Party members support the inclusion of certain conditions for refusing consent for union employees to enter a workplace. We believe this should be stronger, requiring consent of the employer for entry at all times—the situation in all cases before the Employment Relations Amendment Act 2018 took effect.

Appendix

Committee process

The Screen Industry Workers Bill was referred to the committee on 5 March 2020. The closing date for submissions was 25 May 2020. We received and considered 207 submissions from interested groups and individuals. We heard oral evidence from 30 submitters at hearings in Wellington and via video link.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Dan Bidois

Hon Clare Curran

Paulo Garcia

Golriz Ghahraman

Marja Lubeck

Jo Luxton

Mark Patterson

Erica Stanford

Jan Tinetti

Nicola Willis

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Andrew Little

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Screen Industry Workers Act **2020**.

2 Commencement

This Act comes into force 28 days after the date of Royal assent. 5

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to provide a workplace relations framework for certain participants in the screen industry. 10

4 Overview of Act

(1) This Act is about the employment status of ~~certain~~ workers in the screen industry. It is also about ~~certain workers who are~~ contractors in that industry, their conditions of work, and their ability to bargain collectively. Two types of collective contract may be agreed. They are— 15

- (a) occupation-level collective contracts; and
- (b) enterprise-level collective contracts.

(2) It is divided into ~~5-6~~ Parts.

(3) This Part (**Part 1**) covers the following preliminary matters:

- (a) the purpose of the Act: 20
- (b) the screen production workers to whom it applies (by reference to their employment status):
- (c) ~~the a prohibition on contracting out of the Act and the disapplying of certain provisions of the Commerce Act 1986 relating to restrictive trade practices~~: 25

- (ca) the unenforceability of contracts, agreements, or other arrangements preventing screen production workers from raising complaints about bullying, discrimination, or harassment under any enactment:
- (cb) the disapplying of certain provisions of the Commerce Act 1986 relating to restrictive trade practices: 5
- (d) ~~its~~ the Act's application to the Crown:
- (e) transitional, savings, and related provisions:
- (f) definitions of terms used.
- (3A) **Part 1A** contains provisions that deal with matters relating to freedom of association as those matters relate to persons to whom the Act applies, including providing protection to screen production workers from undue influence relating to joining or belonging to a worker organisation. 10
- (4) **Part 2** contains 2 subparts.
- (5) **Subpart 1** requires parties to a workplace relationship to act in good faith (*see section 13*) ~~and provides protection to screen production workers from undue influence relating to joining or belonging to a worker organisation.~~ 15
- (6) **Subpart 2** deals with matters relating to screen production workers' individual contracts, including minimum requirements ~~and~~ a prohibition on retaliatory termination motivated by a worker exercising or proposing to exercise any rights conferred by the contract, and the processes by which disputes relating to individual contracts may be resolved. 20
- (7) **Part 3** contains 4 subparts.
- (8) **Subpart 1** sets out the process for a society to register as a worker organisation or an engager organisation. This is a ~~pre-condition~~ precondition to the organisation being able to initiate or participate in collective bargaining or rely on the workplace access provisions in **Part 5**. 25
- (9) **Subpart 2** contains provisions that apply to all collective bargaining under the Act, whether occupation-level ~~and~~ or enterprise-level ~~collective bargaining.~~
- (10) **Subpart 3** deals with matters that apply particularly to bargaining for occupation-level collective contracts. These contracts apply to all screen production workers who do a particular type of work within the screen industry (for example, writers, directors, game developers, or production/post-production technicians) and all the entities ~~who~~ that engage their services. For the purposes of this subpart, the Employment Relations Authority (the **Authority**) is responsible for deciding whether bargaining may be initiated, who the parties to the bargaining may be, and which worker organisation will conduct the ratification vote. 30
- (11) **Subpart 4** deals with matters that apply particularly to bargaining for enterprise-level collective contracts. These contracts apply to the work specified in the coverage clause of the contract in relation to a particular screen production or a particular entity ~~who~~ that engages screen production workers. 40

- (12) **Part 4** contains 2 subparts.
- (13) **Subpart 1** relates to dispute resolution ~~procedures~~ processes. The primary problem-solving mechanism is voluntary mediation between parties. However, parties to a dispute may apply to the Authority for facilitation or a binding determination (which the Authority may decline to accept if it considers the dispute ~~is~~ would be better settled in another manner). In addition, the Authority may fix terms in a collective contract in certain situations. The Employment Court (the court) has a role in respect of challenges to the decisions of the Authority ~~and judicial review matters~~. Judicial review is also available in relation to certain decisions of the Authority or the Registrar of Screen Industry Organisations (referred to in **subsection (16)** below). 5 10
- (14) **Subpart 2** deals with penalties and offences, with the Authority having full and exclusive jurisdiction to deal with all actions for the recovery of penalties for a breach of any provision of this Act for which a penalty is provided. The court has jurisdiction in relation to offences against **section 65**. 15
- (15) **Part 5** contains 2 subparts.
- (16) **Subpart 1** deals with ~~miscellaneous provisions relating to~~ the following matters:
- (a) rules for access to workplaces by representatives of worker organisations: 20
 - (b) the Registrar of Screen Industry Organisations, a position established to provide certain administrative functions under the Act ~~(for example, the registering of incorporated societies under **section 23** as worker or engager organisations)~~;
 - (c) redefining the occupational groups set out in **Schedule 3** by Order in Council (for the purposes of occupation-level collective contracts): 25
 - (d) matters in relation to which regulations may be prescribed.
- (17) **Subpart 2** contains amendments to the Employment Relations Act 2000.
- (18) There are 4 schedules, as follows:
- (a) **Schedule 1** provides a transitional provision relating to contracts to which this Act would automatically apply had the contracts been entered into after its commencement: 30
 - (b) **Schedule 2** specifies the screen productions to which this Act does and does not apply:
 - (c) **Schedule 3** sets out the occupational groups in relation to which an occupation-level collective contract may apply: 35
 - (d) **Schedule 4** sets out the final offer arbitration process, the dispute resolution mechanism the Authority is required to use to fix 1 or more terms of a collective contract if a dispute in relation to those terms is preventing the bargaining parties from concluding the contract. 40

- (19) This section is only a guide to the general scheme and effect of the provisions referred to in it.

5 Employment status of screen production workers determined by this Act

- (1) This Act determines the employment status of a person who falls within the meaning of screen production worker in **section 11**. 5
- (2) If an individual is a screen production worker who is a party to, or covered by, a written ~~employment~~ agreement with an engager stating that the person is an employee,—
- (a) the agreement is conclusive proof for the purposes of this section that the person is an employee of the engager; and 10
- (b) this Act does not apply to ~~them~~ the person.
- (3) If an individual is a screen production worker who is not a party to, or covered by, a written ~~employment~~ agreement with an engager stating that the person is an employee,—
- (a) that is conclusive proof for the purposes of this section that the person is not an employee of the engager; and 15
- (b) this Act applies to ~~them~~ the person.
- (4) To avoid doubt, ~~no an~~ individual who is a screen production worker ~~can~~ cannot invoke section 6(2) of the Employment Relations Act 2000 to determine whether they are an employee. 20
- (5) To avoid doubt, section 6 of the Employment Relations Act 2000 determines the employment status of ~~any other an~~ individual who works in the screen industry but who is not a screen production worker within the meaning of **section 11** of this Act.

6 No contracting out 25

The provisions of this Act have effect despite anything to the contrary in any contract ~~or other agreement~~, agreement, or other arrangement.

6A Prohibition on matters relating to bullying, discrimination, and harassment

- (1) A contract, agreement, or other arrangement between persons must not prevent a screen production worker (or any person acting on their behalf) from raising a complaint of bullying, discrimination, or harassment under this or any other enactment. 30
- (2) The contract, agreement, or other arrangement is unenforceable to the extent that it contains such a prohibition. 35

~~7 Application of Commerce Act 1986~~

~~Nothing in section 27 or 30 of the Commerce Act 1986 applies to, or in respect of, any matter or thing authorised by this Act.~~

- 7 Exemption from Commerce Act 1986 prohibition on restrictive trade practices**
- (1) Nothing in section 27 or 30 of the Commerce Act 1986 applies to—
- (a) anything done by any person for the purposes of collective bargaining for a collective contract in accordance with this Act; or 5
- (b) anything done by any person to give effect to a collective contract entered into in accordance with this Act.
- (2) Nevertheless, **section 28** of this Act prohibits industrial action (within the meaning of that section) during bargaining for a collective contract.
- 8 Act binds the Crown** 10
- This Act binds the Crown.
- 9 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 10 Interpretation** 15
- (1) In this Act, unless the context otherwise requires,—
- Authority** means the Employment Relations Authority established under section 156 of the Employment Relations Act 2000
- bargaining**, in relation to bargaining for a collective contract, means all the interactions between the parties to the bargaining that relate to the bargaining, including— 20
- (a) negotiations that relate to the bargaining; and
- (b) communications or correspondence (between, or on behalf of, the parties before, during, or after negotiations) that relate to the bargaining
- chief executive** means the chief executive of the department 25
- collective contract**—
- (a) means the collection of terms contained in an enterprise-level collective contract or an occupation-level collective contract; and
- (b) includes any variation to the terms of that contract
- court** means the Employment Court constituted under section 186 of the Employment Relations Act 2000 30
- coverage clause**,—
- (a) in relation to an occupation-level collective contract, means the provision in the contract that specifies the occupational group to which the contract applies: 35
- (b) in relation to an enterprise-level collective contract, means the provision in the contract that specifies the work to which the contract applies

department means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

dispute means, as the case may be,—

(a) any dispute about the interpretation, application, or operation of an individual contract: 5

(b) any dispute about the interpretation, application, or operation of a collective contract:

(c) any problem relating to or arising from bargaining for a collective contract:

(d) any problem relating to or arising from a workplace relationship 10

engager means a person who engages 1 or more screen production workers (for example, a production company)

engager organisation means an organisation registered under **section 23** as an engager organisation

enterprise-level collective contract means a collective contract; the terms of which apply to the persons specified in **section 54** 15

individual contract means the contract between a screen production worker and the worker's engager (in relation to the screen production work concerned)

occupation-level collective contract means a collective contract; the terms of which apply to the persons specified in **section 48** 20

occupational group means a category of screen production worker specified in **Schedule 3**

person in control of the workplace means—

(a) the person who, at the time at which a request to enter a workplace is made under **section 67**, is in control of the workplace; or 25

(b) a representative of that person

Registrar means the Registrar of Screen Industry Organisations appointed under **section 71**

screen production means a record (or any part of it) captured in any medium from which a moving image may be produced for distribution to the public by any means including, without limitation, cinematic exhibition, television broadcast, Internet streaming, or software download 30

screen production worker or **worker** has the meaning given in **section 11**

worker organisation means an organisation registered under **section 23** as a worker organisation 35

workplace—

(a) means—

- (i) a place at which a screen production worker works from time to time; and
- (ii) a place to which a screen production worker goes to do work; but
- (b) for the purposes of **sections 66 to 70**, excludes any building or any part of a building to the extent that it is occupied as a residence and is not being used as a production set

workplace relationship means any of the relationships between the following persons:

(aaa) an engager and an individual bargaining for an individual contract:

- (a) a screen production worker and the worker's engager:
- (b) a worker organisation and—
 - (i) its members who are screen production workers; and
 - (ii) any other screen production workers to whom a collective contract may apply and for whom the worker organisation is a bargaining party or signatory party (including workers who are members of an organisation referred to in **subparagraph (iii)**); and
 - (iii) any other worker organisation that is bargaining for, or a party to, the same collective contract:

- (c) an engager organisation and—
 - (i) its members who engage screen production workers; and
 - (ii) any other engager to whom a collective contract may apply and for whom the engager organisation is a bargaining party or signatory party (including members of an organisation referred to in **subparagraph (iii)**); and
 - (iii) any other engager organisation that is bargaining for, or a party to, the same collective contract;

(d) a worker organisation and an engager organisation bargaining for an occupation-level collective contract:

(e) a worker organisation and an engager bargaining for an enterprise-level collective contract.

(1A) For the purposes of this Act,—

(a) an occupation-level collective contract applies to a worker if **section 48(a)** applies to the worker:

(b) an enterprise-level collective contract applies to a worker if **section 54** (and, as the case may be, **section 54A**) applies to the worker.

- (2) **Subsection (3)** applies for the purposes of assisting the interpretation of any provision of this Act that applies 1 or more provisions of the Employment Relations Act 2000, and it does so with any necessary modifications.

- (3) Without limiting the ordinary meaning of that term, **necessary modifications** to a provision include the following:
- (a) any reference to an employee must be read as if it were a reference to a screen production worker; and
 - (b) any reference to an employer must be read as if it were a reference to an engager; and 5
 - (c) any reference to any employment agreement must be read as if it were a reference to an individual contract; and
 - (d) any reference to a union must be read as if it were a reference to a worker organisation; and 10
 - (e) any reference to a collective agreement must be read as if it were a reference to a collective contract.

11 Meaning of screen production worker

- (1) In this Act, **screen production worker** or **worker**—
- (a) means an individual— 15
 - (i) who is engaged by a person to contribute to the creation of 1 or more screen productions to which this Act applies (*see section 12*); and
 - (ii) who undertakes the work in New Zealand; but
 - (b) excludes any individual who, in relation to ~~that or those~~ the screen production or screen productions,— 20
 - (i) only provides support services; or
 - (ii) is a volunteer (~~as that term is described in section 6(1)(c) of the Employment Relations Act 2000~~); or
 - (iii) is engaged to do the work by ~~an entity~~ a person that does not primarily engage in work relating to the creation of screen productions. 25
- ~~(2) In **subsection (1)(b)(i)**, **support services** means accounting, auditing, management, representation, legal, advertising, or similar services that have a contributing value or interest peripheral to the actual creation of the screen production.~~ 30
- (2A) For the purposes of **subsection (1)**, an individual (I), is engaged by a person (P) if—
- (a) I is engaged directly by P; or
 - (b) I is engaged indirectly through 1 or more interposed persons (for example, a company that I controls in any manner). 35
- (3) For the purposes of **subsection (1)(b)(iii)**, ~~an entity~~ a person (whether a company, partnership, individual, or other entity) **does not primarily engage in**

~~work relating to the creation of screen productions—screen production work~~ if the ~~entity~~ person—

- (a) derived less than 50% of its average annual gross income (within the meaning of section BC 2 of the Income Tax Act 2007) from work relating to the creation of screen productions in the previous 3 financial years; and 5
- (b) is not a special purpose vehicle established within those previous 3 financial years (being an entity established principally for the purpose of creating or contributing to 1 or more screen productions).

(4) In this section,— 10

support services means any of the following services that make a peripheral contribution to the creation of a screen production:

- (a) accounting, administration, advertising, auditing, legal, management, or representation services;
- (b) any other services of a similar nature 15

volunteer means an individual who does work without reward and without expecting reward.

12 Screen productions to which Act applies

- (1) This Act applies in respect of the screen productions described in **clause 1 of Schedule 2.** 20
- (2) This Act does not apply in respect of the screen productions described in **clause 2 of Schedule 2.**

Part 1A

Freedom of association

12A Voluntary membership of worker organisation or engager organisation 25

(1) A contract, agreement, or other arrangement between persons must not require a screen production worker—

- (a) to become or remain a member of a worker organisation or a particular worker organisation; or
- (b) to cease being a member of a worker organisation or a particular worker organisation; or 30
- (c) not to become a member of a worker organisation or a particular worker organisation.

(2) A contract, agreement, or other arrangement between persons must not require an engager— 35

- (a) to become or remain a member of an engager organisation or a particular engager organisation; or

- (b) to cease being a member of an engager organisation or a particular engager organisation; or
- (c) not to become a member of an engager organisation or a particular engager organisation.

12B Prohibition on preferential treatment

5

(1) A contract, agreement, or other arrangement between persons must not confer on a screen production worker, because the worker is or is not a member of a worker organisation or a particular worker organisation,—

- (a) any preference for the worker's engagement as a screen production worker; or
- (b) any preference for the worker's engagement as a screen production worker to continue; or
- (c) any preference in relation to—
 - (i) the worker's terms of engagement (including terms relating to compensation for termination of their contract); or
 - (ii) any other benefit or opportunity that relates to the worker's engagement (whether specified in their individual contract or otherwise).

10

15

(2) **Subsection (1)** is not breached simply because a screen production worker's individual contract is different from those of other screen production workers engaged by the same engager.

20

(3) A contract, agreement, or other arrangement between persons must not confer any benefit or opportunity on an engager because the engager is or is not a member of an engager organisation or a particular engager organisation (for example, an arrangement offering the engager a more favourable contract on the condition that the engager not join an engager organisation).

25

12C Arrangements inconsistent with section 12A or 12B of no effect

A contract, agreement, or other arrangement has no force or effect to the extent that it is inconsistent with **section 12A or 12B**.

12D Undue influence prohibited

30

(1) A person must not exert undue influence, directly or indirectly, on a screen production worker with the intention of inducing the worker to—

- (a) form, join, not join, remain a member of, or cease to be a member of a worker organisation; or
- (b) participate or not participate in any aspect of collective bargaining under this Act; or
- (c) be covered or not be covered by an enterprise-level collective contract;
or

35

- (d) terminate their individual contract with their engager on account of the fact that they are or are not a member of a worker organisation or a particular worker organisation.
- (2) A person must not exert undue influence, directly or indirectly, on any person with the intention of inducing the person to— 5
- (a) not act on behalf of any screen production worker; or
- (b) cease to act on behalf of any screen production worker.

12E Penalty for breaching section 12D

- (1) A person who breaches **section 12D** is liable to a penalty under this Act.
- (2) Matters relevant to whether a person has exerted undue influence on any other person under **section 12D** include any developments in the common law relating to the parameters of undue influence under the Employment Relations Act 2000 that are relevant to the context of this Act. 10

Part 2

Workplace relationships and individual contracts 15

Subpart 1—Workplace relationships

13 Parties to workplace relationship must act in good faith

- (1) The parties to a workplace relationship must not, whether directly or indirectly,—
- (a) do anything to mislead or deceive each other; or 20
- (b) do anything that is likely to mislead or deceive each other.
- (2) ~~The~~ For the purposes of this Act, the duties imposed under **subsection (1)** are a complete description of the duty of good faith in relation to workplace relationships ~~for the purposes of this section.~~
- (3) **Subsection (2)** is subject to **subsection (4)**. 25
- (4) For the purposes of this Act, the duties imposed under **subsection (1) and section 26** are a complete description of the duty of good faith in relation to a workplace relationship between parties bargaining for a collective contract.

14 ~~Person must not exert undue influence on screen production worker~~

- ~~A person must not exert undue influence, directly or indirectly, on any screen production worker with the intention of inducing the worker to—~~ 30
- (a) ~~form, join, not join, remain a member of, or cease to be a member of a worker organisation; or~~
- (b) ~~participate or not participate in any aspect of collective bargaining under this Act; or~~ 35

- (e) ~~be covered or not be covered by a collective contract.~~

15 Penalty for breaching section 13-or-14

A person who breaches **section 13-or-14** is liable to a penalty under this Act.

Subpart 2—Individual contracts

16AAA Engager responsibilities before entering individual contracts

5

An engager must do at least the following things before entering into a new individual contract:

- (a) give the individual concerned a copy of the contract intended for negotiation (whether contained in a single document or otherwise); and
- (b) advise the individual that they are entitled to seek independent advice about it; and 10
- (c) give the individual a reasonable opportunity to seek that advice; and
- (d) consider any issues raised by the individual and respond in good faith.

~~16 Engager must provide screen production worker with individual contract~~

- (1) ~~An individual contract must be in writing.~~ 15
- (2) ~~An engager must provide a screen production worker with a copy of their individual contract as soon as practicable after the contract is entered into.~~
- (3) ~~The contract must contain the terms specified in **section 17**.~~
- (4) ~~If the coverage clause of any collective contract covers the work to be done by the worker, or an occupational group to whom the worker belongs, the individual contract —~~ 20
- (a) ~~must also contain all terms of the collective contract that the collective contract requires be included in the individual contracts of workers; and~~
- (b) ~~must be deemed to contain every other term of the collective contract that is applicable to the worker and is not otherwise covered by a term of the individual contract to the same effect or to a more favourable effect; and~~ 25
- (c) ~~may contain any other terms that the parties agree, except any terms that, individually or in their overall effect, are less favourable to the worker than the terms of the collective contract.~~ 30
- (5) ~~To the extent that the worker's individual contract breaches **subsection (4)(c)**, the contract is unenforceable.~~

16 Engager must provide screen production worker with individual contract

- (1) An individual contract must be in writing.
- (2) An engager must ensure that **subsection (1)** is complied with. 35

- (3) An engager must provide a screen production worker with a copy of their individual contract as soon as practicable after the contract is entered into.
- (4) If the parties wish to vary the contract, the engager must—
- (a) give the worker a copy of the contract with the potential variation; and
 - (b) advise the worker that they are entitled to seek independent advice about it; and 5
 - (c) give the worker a reasonable opportunity to seek that advice; and
 - (d) consider any issues raised by the worker and respond in good faith.
- (5) An engager must provide the worker with a copy of the varied contract as soon as practicable after the contract is varied. 10
- (6) **Subsection (3)** is subject to **section 16A(7)**.
- (7) **Subsections (4) and (5)** do not apply to any of the following variations:
- (a) variations resulting from a collective contract coming into force that applies to the worker:
 - (b) variations resulting from a variation to a collective contract if— 15
 - (i) the collective contract applies to the worker; and
 - (ii) the variation to the collective contract will apply to the worker.

16A Individual contract terms

- (1) A screen production worker’s individual contract must contain the terms specified in **section 17**. 20
- (2) A screen production worker’s individual contract must also comply with—
- (a) **subsection (3)**, if an occupation-level collective contract applies to the worker:
 - (b) **subsection (4)**, if an enterprise-level collective contract applies to the worker: 25
 - (c) **subsection (5)**, if both an occupation-level collective contract and an enterprise-level collective contract apply to the worker.
- (3) The worker’s individual contract—
- (a) must contain all terms of the occupation-level collective contract that are required to be included in an individual contract (except terms otherwise covered by the worker’s individual contract to the same or a more favourable effect): 30
 - (b) is deemed to contain every other term of the collective contract that is applicable to the worker (except terms otherwise covered by the worker’s individual contract to the same or a more favourable effect): 35
 - (c) may contain any other terms that the worker and engager agree, except any terms that, individually or in their overall effect, are—

- (i) prohibited under **section 6A**; or
- (ii) less favourable to the worker than the terms of the collective contract and not authorised in accordance with **section 33**.
- (4) The worker's individual contract—
- (a) is deemed to contain every term of the enterprise-level collective contract that is applicable to the worker (except terms otherwise covered by the worker's individual contract to the same or a more favourable effect): 5
- (b) may contain any other terms that the worker and engager agree, except any terms that, individually or in their overall effect, are— 10
- (i) prohibited under **section 6A**; or
- (ii) less favourable to the worker than the terms of the collective contract and not authorised in accordance with **section 33**.
- (5) The worker's individual contract—
- (a) must contain all terms of the occupation-level collective contract that are required to be included in an individual contract (except terms otherwise covered by either the worker's enterprise-level collective contract or individual contract to the same or a more favourable effect): 15
- (b) is deemed to contain every other term of the occupation-level collective contract that is applicable to the worker (except terms otherwise covered by either the worker's enterprise-level collective contract or individual contract to the same or a more favourable effect): 20
- (c) is deemed to contain every term of the enterprise-level collective contract that is applicable to the worker (except terms otherwise covered by the worker's individual contract to the same or a more favourable effect): 25
- (d) may contain any other terms that the worker and engager agree, except any terms that, individually or in their overall effect, are—
- (i) prohibited under **section 6A**; or
- (ii) less favourable to the worker than the terms of the collective contracts and not authorised in accordance with **section 33**. 30
- (6) For the purposes of **section 16**, the terms of any collective contract that are deemed to be included in a screen production worker's individual contract in accordance with this section are not required to be separately duplicated in the worker's individual contract. 35
- (7) A worker's individual contract is unenforceable to the extent that it contains terms specified in **subsection (3)(c), (4)(b), or (5)(d)**.

17 Mandatory individual contract terms

- (1) An individual contract must contain a term that provides that both parties to the contract must comply at all times with their respective obligations under the Health and Safety at Work Act 2015 and the Human Rights Act 1993.
- (2) An individual contract must contain ~~a plain language explanation~~ an explanation in plain language of the process by which the screen production worker may raise, and the engager respond to, a complaint by the worker about bullying, discrimination, or harassment in the workplace. 5
- (2A) An individual contract must contain an explanation in plain language of the processes available for resolving disputes, including those available under **subpart 1 of Part 4.** 10
- (3) An individual contract must contain a term that sets out—
- (a) the period of notice (if any) required if either party to the contract terminates the contract; and
- (b) the compensation (if any) payable to a screen production worker if the party who terminates the contract is the worker's engager. 15

18 Prohibition on retaliatory termination of individual contracts

- (1) An engager must not terminate a screen production worker's contract ~~(or give notice to terminate)~~ if the decision to do so is motivated wholly or partly by the exercise or proposed exercise by the worker of any right, power, authority, or remedy conferred on the worker by— 20
- (a) ~~by a term of the worker's individual contract (including, to avoid doubt, any term of a collective contract that is part of that contract under **section 16(4)**); or~~
- (b) by this Act or any other enactment. 25
- (2) An engager must not terminate a screen production worker's contract if the decision to do so is motivated wholly or partly because the worker has provided or is intending to provide information or evidence in relation to a complaint of bullying, discrimination, or harassment made by another individual under this or any other enactment. 30

~~19 Parties may resolve individual contract disputes using dispute resolution procedures~~

~~An engager and a screen production worker may resolve any dispute that arises between them that relates to the worker's individual contract by way of the dispute resolution procedures set out in **subpart 1 of Part 4.**~~ 35

19 Resolution of disputes relating to individual contracts

- (1) A dispute relating to an individual contract may be resolved between the persons concerned using—
- (a) the dispute resolution processes set out in **subpart 1 of Part 4;** or

- (b) any other agreed process, including any variation, addition, or replacement to a process set out in that subpart.
- (2) For the purposes of resolving the dispute,—
- (a) a worker organisation may act on behalf of a screen production worker, if the worker consents; and 5
- (b) an engager organisation may act on behalf of an engager, if the engager consents.
- (3) **Subsection (1)(b)** is subject to the rest of this section.
- (4) The dispute resolution processes set out in **subpart 1 of Part 4** must be used to resolve a dispute relating to an individual contract if the persons concerned cannot agree on any other process. 10
- (5) Actions relating to an individual contract for which this Act imposes a penalty may only be taken in accordance with **subpart 2 of Part 4**.
- (6) A contract, agreement, or other arrangement is unenforceable to the extent that it breaches this section. 15
- 20 ~~Penalty for failing to comply with~~ Penalties relating to individual-contract requirements contracts**
- (1AAA) An engager is liable to a penalty under this Act if the engager enters into an individual contract that includes a term that has the effect of breaching **section 6A**. 20
- (1AAB) An engager is liable to a penalty under this Act if the engager does not comply with 1 or more of the requirements in **section 16AAA(1)**.
- (1) An engager is liable to a penalty under this Act if the engager does not comply with the requirements of **~~section 16(4) or (2) or (3)~~**.
- (2) An engager is liable to a penalty under this Act if the engager enters into an individual contract ~~with a screen production worker~~ and the contract does not comply with the requirements of **~~section 16(3), (4)(a), or (4)(c)~~ 16A**. 25
- (3) An engager is liable to a penalty under this Act if the engager terminates a screen production worker's contract and is motivated to do so ~~(in whole or in part)~~ (wholly or partly) for any of the reasons set out in **section 18**. 30

Part 3

Collective bargaining

Subpart 1—Registration as worker organisation or engager organisation

- 21 Incorporated society may apply to register as worker organisation or engager organisation** 5
- (1) An incorporated society may apply to the Registrar to be registered as a worker organisation or an engager organisation provided it is entitled to be registered under **section 22**.
- (2) An application must be made in ~~the prescribed manner~~ accordance with regulations made under **section 75(1)** (if any) and must be accompanied by— 10
- (a) a copy of the society’s certificate of incorporation under the Incorporated Societies Act 1908; and
 - (b) a copy of the society’s rules as registered under that Act; and
 - (c) a statutory declaration made by an officer of the society setting out the reasons why the society is entitled to be registered (in terms of **section 22(1)(a) or (b)**); and 15
 - (d) the prescribed information (if any).
- 22 When society entitled to be registered**
- (1) An incorporated society is entitled to be registered as a worker organisation or an engager organisation if the society— 20
- (a) is a union that, under the Employment Relations Act 2000 or the Trade Unions Act 1908, is registered and holds a current certificate of registration; or
 - (b) meets the requirements in **subsection (2)**.
- (2) The requirements are— 25
- (a) the object or an object of the society is to promote its members’ collective work interests; and
 - (b) the society’s rules are democratic, not unreasonable, not unfairly discriminatory or unfairly prejudicial, and not contrary to law; and
 - (c) the society’s rules contain a provision relating to the process for holding 1 or more secret ballots for the purposes of this Act; and 30
 - (d) the society is independent of, and is constituted and operates at arm’s length from,—
 - (i) any engager or engager organisation, if the society is seeking to be registered as a worker organisation; and 35
 - (ii) any worker organisation, if the society is seeking to be registered as an engager organisation.

- (3) In deciding whether a society is entitled to be registered, the Registrar may rely on the statutory declaration made by its officer under **section 21(2)(c)**.

23 Registration

- (1) The Registrar must register an incorporated society as a worker organisation or an engager organisation, as the case may be, and provide it with a certificate of registration in the prescribed form (if any), if the society— 5
- (a) applies to be registered in accordance with **section 21**; and
 - (b) is entitled to be registered under **section 22**.
- (2) A certificate of registration is conclusive evidence that— 10
- (a) the society is registered as a worker organisation or an engager organisation under this Act (on and from the date stated in the certificate); and
 - (b) the society has complied with all the requirements of this Act relating to its registration as such an organisation.
- (3) The Registrar must— 15
- (a) keep, in any manner that the Registrar thinks fit, a register of registered organisations for the purposes of this section; and
 - (b) maintain a list of worker organisations and engager organisations on the department's Internet site.

24 Annual return of members

- Each worker organisation or engager organisation must deliver to the Registrar, not later than 1 June in each calendar year, an annual return of members that— 20
- (a) states how many members it had as at 1 March in that year; and
 - (b) includes the prescribed information (if any).

25 Cancellation of registration

- (1) The Registrar may cancel the registration of a worker organisation or an engager organisation, but only if— 25
- (a) the organisation applies to the Registrar to cancel its registration; or
 - (b) the Authority makes an order directing the Registrar to cancel its registration.
- (2) The Authority may make an order for the purposes of **subsection (1)(b)** only if the organisation has ceased to meet the relevant requirements of **section 22**. 30

Subpart 2—Matters applying to all collective bargaining

26 Collective bargaining ~~to~~ must be carried out in good faith

- (1) ~~The parties to collective bargaining must act in good faith during the bargaining process and must (as well as complying with **section 13**) do at least the following:~~ 35

- (a) ~~as soon as possible after the initiation of bargaining, use their best endeavours to agree a process for conducting the bargaining in an effective and efficient manner (including how they will address any disputes that may arise between them during the bargaining);~~
- (b) ~~meet each other from time to time for the purposes of the bargaining;~~ 5
- (c) ~~consider and respond to proposals made by each other;~~
- (d) ~~continue to bargain (including doing the things specified in **paragraphs (b) and (c)**) about any matters on which they have not reached agreement even if they have come to a standstill about 1 or more other matters;~~ 10
- (e) ~~recognise the role and authority of any person chosen by each to be its representative or advocate;~~
- (f) ~~refrain from undermining or doing anything that is likely to undermine the bargaining or the authority of any other party to the bargaining;~~
- (g) ~~provide to each other, on request and in accordance with **section 30**, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.~~ 15
- (1) The parties to collective bargaining must act in good faith during the bargaining process.
- (1A) For that purpose, the parties must do at least the following: 20
- (a) comply with **section 13** (as parties to a workplace relationship); and
- (b) as soon as possible after the initiation of bargaining, use their best endeavours to agree a process for conducting the bargaining in an effective and efficient manner (including how they will address any disputes that may arise between them during the bargaining); and 25
- (c) meet each other from time to time for the purposes of the bargaining; and
- (d) consider and respond to proposals made by each other; and
- (e) continue to bargain (including doing the things specified in **paragraphs (c) and (d)**) about any matters on which they have not reached agreement even if they have come to a standstill about 1 or more other matters; and 30
- (f) recognise the role and authority of any person chosen by each to be its representative or advocate; and
- (g) refrain from undermining or doing anything that is likely to undermine the bargaining or the authority of any other party to the bargaining; and 35
- (h) provide to each other, on request and in accordance with **section 30**, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining; and 40

- (i) comply with **section 27**.
- (2) Matters relevant to whether the parties are dealing with each other in good faith in accordance with this section include—
- (a) the provisions of any agreement about good faith entered into by the parties; and 5
- (b) background circumstances; and
- (c) the circumstances of the parties, including—
- (i) the operational environment of the parties; and
- (ii) the resources available to the parties; and
- (d) any developments in the common law relating to the parameters of good faith in collective bargaining under the Employment Relations Act 2000 that are relevant to the context of this Act. 10
- (3) **Subsection (1)(b) (1A)(c)** does not require the parties to continue to meet each other about proposals that have been considered and responded to.
- (4) Nothing in this section prevents any engager from— 15
- (a) communicating with screen production workers during the bargaining (including, without limitation, in relation to the engager’s proposals for the collective contract); or
- (b) continuing to negotiate and form individual contracts with workers during bargaining. 20
- (5) **Subsection (4)** applies provided the engager’s behaviour is consistent with **subsection (1)(e) and (f) (1A)(f) and (g)** and any duties imposed on the engager by **sections 12D and 13 sections 13 and 14**.
- ~~(6) This section is subject to **section 27**.~~
- ~~(7) A person is liable for a penalty under this Act if the person breaches any provision of this section.~~ 25
- ~~**27 Bargaining parties required to conclude collective contract**~~
- ~~The duty to act in good faith in accordance with **section 26** requires the parties bargaining for a collective contract to conclude a collective contract.~~
- 27 Bargaining parties must conclude collective contract** 30
- The parties bargaining for a collective contract must conclude a collective contract.
- 28 Industrial action prohibited during bargaining**
- (1) Engagers and screen production workers are prohibited, during the bargaining for a collective contract, from taking industrial action, if the action is intended to undermine or affect the outcome of that bargaining (irrespective of whether the engager is a party to, or the worker is represented at, the bargaining). 35

- (2) In this section, **industrial action** means any of the following behaviours:
- (a) 2 or more workers refusing, in a concerted manner, to fulfil 1 or more terms of their individual contracts with their engagers:
 - (b) an engager or a person authorised on the engager's behalf preventing 1 or more workers from carrying out their obligations under their individual contracts (for example, blocking access to a set):
 - (c) an engager refusing to carry out 1 or more obligations under the engager's individual contracts with 1 or more workers (for example, not paying the workers).
- (3) To avoid doubt, nothing in this section prevents 1 or more screen production workers from exercising any rights under section 83 of the Health and Safety at Work Act 2015 to cease or refuse to carry out work. 10
- ~~29 **Penalty for engaging in industrial action during bargaining**~~
- ~~A person is liable for a penalty under this Act if the person breaches **section 28(4)**.~~ 15
- 29A Penalties for failing to comply with collective bargaining requirements**
- (1) A person who breaches **section 26** (other than **subsection (1A)(i)**) is liable to a penalty under this Act.
 - (2) A person who breaches **section 28(1)** is liable to a penalty under this Act.
- 30 Requests for information during bargaining** 20
- (1) This section applies for the purposes of ~~**section 26(4)(g)**~~ **26(1A)(h)**.
 - (2) A request for information made by 1 or more parties to another must—
 - (a) be in writing; and
 - (b) specify the nature of the information requested in sufficient detail to enable the information to be identified; and
 - (c) specify the claim or the response to a claim in respect of which information to support or substantiate the claim or the response is requested; and
 - (d) specify a reasonable time within which the information is to be provided.
 - (3) A party must provide the information requested—
 - (a) directly to the other party or parties; or
 - (b) to an independent reviewer, if the party providing the information reasonably considers that it should be treated as confidential information.
 - (4) A person must not act as an independent reviewer unless appointed by mutual agreement of the party or parties requesting the information and the party that holds the information. 35

- (5) As soon as practicable after receiving information under **subsection (3)(b)**, an independent reviewer must—
- (a) decide whether and, if so, to what extent the information should be treated as confidential; and
 - (b) advise the parties of the decision in a way that maintains the confidentiality of the information. 5
- (6) If an independent reviewer decides that the information should be treated as confidential, the independent reviewer must—
- (a) decide whether and, if so, to what extent the information supports or substantiates the claim or the response to the claim in respect of which the information is requested; and 10
 - (b) advise the party that requested the information of the decision in a way that maintains the confidentiality of the information; and
 - (c) answer any questions from the party that requested the information in a way that maintains the confidentiality of the information. 15
- (7) Unless the parties otherwise agree, information provided under **subsection (3)** and advice and answers provided under **subsections (5) and (6)**—
- (a) must be used only for the purposes of the bargaining concerned; and
 - (b) must be treated as confidential by the parties and any person conducting the bargaining on their behalf; and 20
 - (c) must not be disclosed to anyone else, including any person to whom the collective contract would apply.
- (8) This section does not limit or affect the Privacy Act 1993.
- (9) Nothing in the Official Information Act 1982 (except section 6) enables an engager that is subject to that Act to withhold information that is requested under **~~section 26(4)(g)~~ 26(1A)(h)**. 25

31 Form and content of collective contracts

- (1) A collective contract must—
- (a) be in writing; and
 - (b) after ratification, be signed by each bargaining party. 30
- (2) The contract must contain the terms specified in **section 32**.
- (3) The contract may contain any other terms that the parties agree, except any term that—
- (a) is contrary to law; or
 - (b) is inconsistent with this Act. 35

32 Mandatory collective contract terms

- (1) A collective contract must contain a coverage clause.

- (2) A collective contract must contain the following terms for all screen production workers to whom the coverage clause relates:
- (a) the rates of pay:
 - ~~(b) whether there is a minimum entitlement to breaks and, if so, their frequency, duration, and timing:~~ 5
 - (b) the entitlement to breaks:
 - (c) the extent to which, and the manner in which, public holidays are recognised:
 - (d) the hours of work:
 - (e) availability for work: 10
 - (f) the minimum procedural requirements for raising and responding to a complaint relating to bullying, discrimination, or harassment in the workplace:
 - (g) a termination clause:
 - ~~(h) a plain language explanation of the services available for the resolution of any workplace relationship problems:~~ 15
 - (h) the minimum procedural requirements for resolving disputes relating to an individual contract.
- (3) A collective contract must also contain the following terms:
- (a) the date on which the contract expires or an event on the occurrence of which the contract expires that ~~does not breach the requirements of **section 34**~~ complies with the requirement in **section 32B(1)(b) or (2)(b)**, as the case may be: 20
 - (b) a term providing how the contract may be varied:
 - ~~(e) if the contract is an occupation-level collective contract, a term (which must satisfy the requirements of **section 33**) that allows an engager and a worker to enter into an individual contract containing 1 or more terms that are less favourable to the worker than the collective contract (an exemption provision):~~ 25
 - (c) a term authorising exemptions from the terms of the collective contract (as provided for in **section 33**) if the contract is an occupation-level collective contract. 30
- (4) For the purposes of **subsection (2)(a)**, the contract must contain 1 or more of the following terms:
- (a) the rates payable for certain work or types of work or to certain workers or types of workers (excluding any calculation or other adjustment for royalties and residuals): 35

- (b) the minimum rates payable for certain work or types of work or to certain workers or types of workers (excluding any calculation or other adjustment for royalties and residuals):
- (c) 1 or more methods of calculating the rates or minimum rates payable for certain work or types of work or to certain workers or types of workers (excluding any calculation or other adjustment for royalties and residuals). 5
- (4A) For the purposes of **subsection (2)(b)**, the contract must specify whether or not there is a minimum entitlement to breaks and, if so, their frequency, duration, and timing. 10
- (5) For the purposes of **subsection (2)(c)**, the contract must specify whether or not workers are expected to work on 1 or more public holidays as defined in section 5(1) of the Holidays Act 2003 and, if so,—
- (a) whether they are entitled to receive additional compensation for working on those days; and 15
- (b) the method or methods of calculating the additional compensation.
- (6) For the purposes of **subsection (2)(d)**, the contract must specify whether or not there is a maximum number of hours workers may be required to work in a given period and, if so,—
- (a) whether they are entitled to receive additional compensation for working ~~above~~beyond the maximum hours; and 20
- (b) the method or methods of calculating the additional compensation.
- (7) For the purposes of **subsection (2)(e)**, the contract must specify whether or not workers may be required to be available (with no guarantee for work) beyond the contractually agreed hours and, if so,— 25
- (a) the method or methods of calculating additional compensation (if any) for work done during the period of availability; and
- (b) the method or methods of calculating additional compensation (if any) for being available during the period of availability despite doing no work in that period. 30
- (8) For the purposes of **subsection (2)(g)**, the termination clause must specify—
- (a) the process by which either party to an individual contract may terminate the contract; and
- (b) the period of notice (if any) required by either party; and
- (c) the compensation (if any) payable to the worker if the engager terminates the contract. 35

32A Bargaining fees

- (1) In this section,—

bargaining fee means an amount payable by a screen production worker to a worker organisation under a bargaining fee term, whether payable as a lump sum or on a periodical basis

bargaining fee term means a term in a collective contract that—

- (a) applies to 1 or more non-member workers; and 5
- (b) requires them to pay a bargaining fee; and
- (c) specifies the amount of the bargaining fee

non-member worker means a screen production worker who is not a member of a worker organisation that is a signatory party to a collective contract.

- (2) An occupation-level collective contract must not include a bargaining fee term. 10
- (3) An enterprise-level collective contract may include a bargaining fee term if—
 - (a) the enterprise-level collective contract allows coverage to a non-member worker in a manner authorised by **section 54(2)**; and
 - (b) the bargaining fee term applies only to non-member workers who have consented to be covered under that section; and 15
 - (c) the bargaining fee is no greater than the lowest fee that a non-member worker would be required to pay were they a member of any worker organisation that was a signatory party to the enterprise-level collective contract.
- (4) However, the term has no effect to the extent that it does not comply with **subsection (3)**. 20

32B Minimum and maximum duration of collective contracts

- (1) An occupation-level collective contract—
 - (a) is in force, as from its commencement date, for no less than 3 years; and
 - (b) must expire no more than 6 years from its commencement date. 25
- (2) An enterprise-level collective contract—
 - (a) is in force as from its commencement date; and
 - (b) must expire no less than 3 years and no more than 6 years from its commencement date.
- (3) Despite **subsections (1) and (2)**, a contract that would otherwise expire continues in force for the period specified in **subsection (4)** if the bargaining process to replace the contract has begun (under **section 37 or 51**, as the case may be) before the original date of expiry. 30
- (4) The period is the period (not exceeding 12 months) during which parties are bargaining for a replacement contract. 35
- (5) Despite **subsection (2)(b)**, if the work of all the screen production workers to whom the enterprise-level collective contract applies is completed before the date on which the collective contract expires, the collective contract must be

treated for all purposes as having expired on the date on which all the work is completed.

32C Collective contracts must be sent to chief executive

- (1) The worker organisation responsible for conducting the ratification vote under **section 42** in relation to an occupation-level collective contract must ensure that, as soon as practicable after the contract is signed, the following are delivered to the chief executive: 5
- (a) a copy of the contract; and
 - (b) a statement about the ratification vote that includes—
 - (i) the total number of votes cast; and 10
 - (ii) the total number of votes in favour; and
 - (iii) the total number of votes opposed.
- (2) For each occupation-level collective contract received, the chief executive must—
- (a) give notice in the *Gazette* of the date on which the contract will commence under **section 49** and where a copy of the contract may be obtained; and 15
 - (b) publish the contract on the department’s Internet site.
- (3) The bargaining parties to an enterprise-level collective contract must ensure that, as soon as practicable after the contract is signed, a copy of the contract is delivered to the chief executive. 20
- (4) For each enterprise-level collective contract received,—
- (a) the chief executive may use the information contained in it for only statistical or analytical purposes; and
 - (b) the Official Information Act 1982 does not apply to it. 25

32D Variations to collective contracts

- (1) A collective contract may be varied.
- (2) A variation to an occupation-level collective contract must be—
- (a) assessed by the Authority under **section 46**; and
 - (b) ratified under **section 47**. 30
- (3) For the purposes of **subsection (1)**, the processes in **sections 46 and 47** apply as if the variation were a draft occupation-level collective contract and with any other necessary modifications.
- (4) A variation to an enterprise-level collective contract must be ratified under **section 53**. 35

- (5) For the purposes of **subsection (4), section 53** applies as if the variation were an enterprise-level collective contract and with any other necessary modifications.

33 Exemptions from occupation-level collective contracts

- (1) ~~An exemption provision term referred to in **section 32(3)(c)** must satisfy all the requirements of this section.~~ 5
- (2) ~~The exemption provision must state that 1 or more terms less favourable to screen production workers than the terms of the collective contract (**less favourable terms**) are permitted to be included within the workers' individual contracts, but only if—~~ 10
- (a) ~~the terms relate to a particular screen production; and~~
- (b) ~~otherwise complying with the term or terms of the collective contract would result in significant or unreasonable disruption to the production or a significant or unreasonable increase in its costs; and~~
- (c) ~~the matters in **subsection (5), (6), or (7)** (as the case may be) will be complied with.~~ 15
- (3) ~~An exemption provision must provide a description of the process to be followed if any party to an individual contract intends to include less favourable terms in the individual contract.~~
- (4) ~~No exemption provision may have the effect of allowing less favourable terms relating to the rates payable under the collective contract in accordance with **section 32(2)(a)**.~~ 20
- (5) ~~If production is yet to commence, the engager or engagers concerned may enter into 2 or more individual contracts containing less favourable terms if—~~
- (a) ~~the workers who are parties to the individual contracts agree; and~~ 25
- (b) ~~the signatory parties to the collective contract are notified in writing of—~~
- (i) ~~the term or terms of the collective contract to which the less favourable terms relate; and~~
- (ii) ~~how the inclusion of the less favourable terms will satisfy the criteria in **subsection (2)(a) and (b)**.~~ 30
- (6) ~~If production has already commenced, an engager may enter into an individual contract containing less favourable terms if—~~
- (a) ~~it is the only individual contract relating to that screen production that is entered into that includes less favourable terms; and~~ 35
- (b) ~~the worker who is the party to the individual contract agrees; and~~
- (c) ~~the signatory parties to the collective contract are notified of—~~
- (i) ~~the term or terms of the collective contract to which the less favourable terms relate; and~~

- (ii) ~~how the inclusion of the less favourable terms will satisfy the criteria in **subsection (2)(a) and (b)**.~~
- (7) ~~If production has already commenced, the engager or engagers concerned may enter into 2 or more individual contracts containing less favourable terms if—~~
- (a) ~~the workers who are parties to the individual contracts agree; and~~ 5
- (b) ~~before agreeing, each worker has been given a reasonable opportunity to seek advice about the consequences of agreeing to the less favourable terms (for example, from a worker organisation of which the worker is a member); and~~
- (c) ~~the signatory parties to the collective contract are notified of—~~ 10
- (i) ~~the number of individual contracts that will contain the less favourable terms; and~~
- (ii) ~~the term or terms of the collective contract to which the less favourable terms relate; and~~
- (iii) ~~how the inclusion of the less favourable terms will satisfy the criteria in **subsection (2)(a) and (b)**.~~ 15

33 Exemptions from terms of occupation-level collective contracts

- (1) An occupation-level collective contract must contain a term authorising an engager and 1 or more screen production workers to—
- (a) enter into individual contracts containing 1 or more terms that are less favourable to the workers than the terms of the collective contract (the **less favourable term**); or 20
- (b) vary individual contracts between the engager and the workers to include a less favourable term.
- (2) However, a less favourable term may form part of a worker's individual contract only in the following circumstances: 25
- (a) the less favourable term will relate only to a particular screen production;
- (b) the less favourable term will not have the effect of allowing less favourable terms relating to the rates payable under the collective contract in accordance with **section 32(2)(a)**; 30
- (c) otherwise complying with the terms of the collective contract will result in—
- (i) significant disruption to the production; or
- (ii) a significant increase in its costs; 35
- (d) the engager and the worker have agreed that the less favourable term be included in the individual contract only after—
- (i) the engager has advised the worker that they are entitled to seek independent advice about the term; and

- (ii) the worker has been given a reasonable opportunity to seek that advice; and
- (iii) the engager has considered any issues raised by the worker and responded to them in good faith:
- (e) if the work to which the less favourable term relates has not yet begun, the engager has obtained the written consent of all signatory parties to the collective contract, having first provided those parties with the following information: 5
- (i) the proposed number of individual contracts that will contain the less favourable term; and 10
- (ii) the proposed nature of the less favourable term (for example, the workers will be required to work 10 hours rather than 8 hours each working day); and
- (iii) the term or terms of the collective contract to which the proposed less favourable term relates; and 15
- (iv) how the inclusion of the proposed less favourable term will satisfy the criteria in **paragraph (c)**:
- (f) if the work to which the less favourable term relates has already begun, the engager notifies (in writing) all the signatory parties to the collective contract of: 20
- (i) the number of individual contracts that contain the less favourable term; and
- (ii) the nature of the less favourable term (for example, the workers are required to work 10 hours rather than 8 hours each working day); and 25
- (iii) the term or terms of the collective contract to which the less favourable term relates; and
- (iv) how the inclusion of the less favourable terms satisfy the criteria in **paragraph (c)**.
- (3) If work on the screen production has already begun, the less favourable term may be verbally agreed between the worker and the engager, but the engager must amend the worker's written individual contract as soon as reasonably practicable to record the variation made in accordance with this section. 30
- (4) Without limiting **subsection (2)(c)**, a significant disruption to a production may include a significant disruption— 35
- (a) to the time period scheduled for the work to which the less favourable term relates (for example, a weather-event or other uncontrollable interruption requiring work to be completed in a compressed timeframe); or
- (b) to the availability of essential personnel or equipment; or

- (c) to the location of the production (for example, if the current location becomes unsafe).

33A Penalty for breaching section 33

An engager who breaches **section 33** is liable to a penalty under this Act.

34 ~~Minimum and maximum duration of collective contracts~~

5

- (1) ~~A collective contract is—~~

- (a) ~~in force, as from its commencement date, for no less than 3 years; and~~
 (b) ~~expires, no more than 6 years from its commencement date.~~

- (2) ~~However, a contract that would otherwise expire as provided in **subsection (1)(b)** continues in force, for the period specified in **subsection (3)**, if bargaining for the purpose of replacing the contract has been initiated before the contract expired.~~

10

- (3) ~~The period is the period (not exceeding 12 months) during which bargaining continues for a collective contract to replace the contract that has expired.~~

- (4) ~~For the purposes of **subsection (2)**, bargaining is initiated in relation to an occupation level collective contract on the date that a bargaining party applies to initiate under **section 37**.~~

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35 ~~Collective contracts must be sent to chief executive~~

- (1) ~~The bargaining parties to a collective contract must ensure that, as soon as practicable after the contract is signed a copy of the contract is delivered to the chief executive.~~

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- (2) ~~For each occupation level collective contract received, the chief executive must—~~

- (a) ~~give notice in the *Gazette* of the date on which the contract will commence under **section 49** and where a copy of the contract may be obtained; and~~

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- (b) ~~publish the contract on the department's Internet site.~~

- (3) ~~For each enterprise level collective contract received,—~~

- (a) ~~the information contained in it must be used for statistical or analytical purposes only; and~~

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- (b) ~~the Official Information Act 1982 does not apply to it.~~

35A Enforcement of collective contracts

- (1) A worker organisation or an engager organisation that is a signatory party to a collective contract may enforce the contract, whether in its role as a signatory party, a party to a workplace relationship, or on behalf of another party in accordance with **section 19 or 35B** (for the purposes of settling a dispute).

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- (2) This section is for the avoidance of doubt.

35B Resolution of disputes relating to collective contracts

- (1) A dispute relating to a collective contract may be resolved between the persons concerned using—
- (a) the dispute resolution processes set out in **subpart 1 of Part 4**; or
 - (b) any other agreed process, including any variation, addition, or replacement to a process set out in that subpart. 5
- (2) In resolving a dispute,—
- (a) a worker organisation may act on behalf of 1 or more screen production workers, if the workers consent; and
 - (b) an engager organisation may act on behalf of 1 or more engagers, if the engagers consent. 10
- (3) **Subsection (1)(b)** is subject to the rest of this section.
- (4) The dispute resolution processes set out in **subpart 1 of Part 4** must be used to resolve a dispute relating to a collective contract if the persons concerned cannot agree on any other process. 15
- (5) Only the Authority has the power to fix terms disagreement about which is preventing conclusion of an occupation-level collective contract (see **sections 58(3) and 59(3)**).
- (6) An action for a penalty under this Act that relates to a collective contract may only be taken in accordance with **subpart 2 of Part 4**. 20
- (7) A contract, agreement, or other arrangement is unenforceable to the extent that it breaches this section.
- (8) In this section, a reference to a **collective contract** includes a reference to bargaining for a collective contract.

Subpart 3—Matters applying to bargaining for occupation-level collective contracts 25

36 Preliminary requirements

- (1) To participate in bargaining for an occupation-level collective contract under this Act (whether on behalf of screen production workers or engagers), a person must be registered as a worker organisation or an engager organisation in accordance with **subpart 1** of this Part. 30
- (2) However, to initiate bargaining for such a contract, a worker organisation or an engager organisation must also apply to the Authority in accordance with **section 37** and the Authority must decide (under this subpart)—
- (a) whether to allow bargaining to be initiated; and 35
 - (b) certain matters relating to the conduct of the bargaining.

- 37 Worker organisation or engager organisation may apply for approval to initiate bargaining**
- (1) A worker organisation or an engager organisation may apply to the Authority to initiate bargaining for an occupation-level collective contract.
- (2) The application must be made ~~in the prescribed manner~~ accordance with regulations made under **section 75(1)** (if any) and be accompanied by— 5
- (a) a copy of the applicant’s certificate of registration provided under **section 23**; and
- (b) a copy of a bargaining notice that complies with the requirements of **subsection (3)**; and 10
- (c) if the applicant is a worker organisation, the following information:
- (i) the number of its members who do the work of the occupational group to be specified in the coverage clause of the contract; and
- ~~(ii) a statement that a simple majority of those members have voted, by secret ballot, for the applicant to initiate collective bargaining; and~~ 15
- (ii) a statement that, of those members, a simple majority who voted by secret ballot voted in favour of the applicant initiating bargaining; and
- (iii) a statement of how the organisation will conduct a ratification vote that will allow any eligible individual who does the work of the occupational group to be specified in the coverage clause to cast a vote, irrespective of whether the person is a member of the applicant’s organisation; and 20
- (d) if the applicant is an engager organisation, the following information: 25
- (i) the number of its members who engage individuals who do the work of the occupational group to be specified in the coverage clause of the contract; and
- ~~(ii) a statement that a simple majority of those members have voted, by secret ballot, for the applicant to initiate collective bargaining; and~~ 30
- (ii) a statement that, of those members, a simple majority who voted by secret ballot voted in favour of the applicant initiating bargaining; and
- (iii) a statement as to which worker organisation it considers should 35
conduct the ratification vote; and
- (e) the prescribed information (if any).
- (3) A bargaining notice must be in writing and identify—
- (a) the occupational group to be specified in the coverage clause of the contract; and 40

- (b) all worker organisations whose members do the work of that occupational group; and
- (c) all engager organisations whose members engage individuals who do the work of that occupational group; and
- (d) any collective contract that applies to some or all of the screen production workers in the occupational group referred to in **paragraph (a)** or the most recently expired collective contract that applied to some or all of those workers (if any); and 5
- (e) who will conduct the ratification vote for the purposes of **section 47**, which must be— 10
 - (i) the applicant, if a worker organisation; or
 - (ii) the worker organisation identified ~~in~~ under **subsection (2)(d)(iii)**, if the applicant is an engager organisation.
- (4) An applicant must, at the same time as applying to the Authority, send a copy (including the accompanying material) to the other worker organisations and engager organisations referred to in **subsection (3)(b) and (c)**. 15
- (5) This section is subject to **section 38**.

38 When application may be made

- (1) If there is no applicable occupation-level collective contract in force or an applicable contract expired more than 2 years previously, a worker organisation may apply to initiate bargaining, and may do so at any time. 20
- (2) If there is an applicable occupation-level collective contract that expired less than 2 years previously, a worker organisation or an engager organisation may apply to initiate bargaining, and may do so at any time.
- (3) If there is an applicable occupation-level collective contract in force,— 25
 - (a) a worker organisation may apply to initiate bargaining no earlier than 180 days before the date on which the contract expires; and
 - (b) an engager organisation may apply to initiate bargaining no earlier than 160 days before the date on which the contract expires.
- (4) To avoid doubt, these are the only circumstances in which a worker organisation or an engager organisation may apply to the Authority for approval to initiate bargaining for an occupation-level collective contract. 30
- (5) In this section, **applicable occupation-level collective contract** means an occupation-level collective contract that applies to the occupational group identified in a bargaining notice in accordance with **section 37(3)(a)**. 35

39 Applications ~~to~~ must be notified and submissions invited

- (1) The Authority must, as soon as is reasonably practicable, give notice on its Internet site of any application to initiate bargaining received under **section 37**.

- (2) The notice must—
- (a) include a copy of the bargaining notice referred to in **section 37(3)**; and
 - (b) invite submissions from any person; and
 - (c) state the date by which submissions must be received (being no earlier than 28 days after the date on which the Authority gives the notice); and 5
 - (d) state the manner in which submissions must be given (which may include by use of a prescribed form); and
 - (e) state any minimum requirements that submissions must comply with (which may, if prescribed, be different requirements for different categories of person); and 10
 - (f) give the contact details of the Authority.
- (3) The Authority may, if it considers it appropriate and in any manner it sees fit, extend the time within which submissions may be made.
- 40 Authority must decide whether to allow bargaining** 15
- (1) Once the submission period has closed, the Authority must decide whether to allow collective bargaining to be initiated.
 - (2) The Authority must approve an application if it is satisfied that there is sufficient support to do so.
 - (3) In this section, **sufficient support** means,— 20
 - (a) if the applicant is a worker organisation, that the Authority is satisfied (having regard to the application and any submissions it has received that comply with the requirements of **section 39**) there are, in total, more individuals who do the work of the occupational group to be specified in the coverage clause of the contract who want to bargain than who do not; and 25
 - (b) if the applicant is an engager organisation, that the Authority is satisfied (having regard to the application and any submissions it has received that comply with the requirements of **section 39**) there are more engagers who engage individuals who do the work of the occupational group to be specified in the coverage clause of the contract who want to bargain than who do not. 30
 - (4) For the purposes of determining the total number of individuals referred to in **subsection (3)(a)**, the number of members of any relevant worker organisation is the total number of members of the organisation who do the work of the occupational group to be specified in the coverage clause of the contract. 35
 - (5) For the purposes of determining the total number of engagers referred to in **subsection (3)(b)**, the number of members of any relevant engager organisation is the total number of members of the organisation who engage screen pro-

duction workers who do the work of the occupational group to be specified in the coverage clause of the contract.

41 Bargaining parties

- (1) This section applies if the Authority approves an application to initiate collective bargaining under **section 40**. 5
- (2) The following organisations are deemed to be bargaining parties, unless **subsection (3) (2A)** applies:
- (a) all worker organisations who have members who do the work of the occupational group to be specified in the coverage clause of the contract; and 10
- (b) all engager organisations whose members engage individuals who do the work of the occupational group to be specified in the coverage clause of the contract.
- (2A) The Authority may excuse an organisation specified in **subsection (2)** from being a bargaining party. 15
- (3) ~~The~~ However, the Authority ~~may~~ must not excuse an organisation ~~specified in **subsection (2)** from being a bargaining party, but only if the Authority is satisfied that, in excusing the organisation, the result would be other than if—~~
- (a) a substantial number or distinct class of screen production workers or engagers would not have ~~not having~~ their interests adequately represented during the bargaining process; or 20
- (b) the number of members of the excused organisation affected by the bargaining (because their work falls within the intended coverage clause) ~~being~~ would be greater than the number of affected members of all other organisations on the same side of the bargaining. 25
- (4) In making a decision under **subsection (3) (2A)**, the Authority—
- (a) must have regard to any submissions received that comply with the requirements of **section 39**; and
- (b) may consider any other information or matter that, in its opinion, is relevant; and 30
- (c) may consider any other information from any worker organisation or engager organisation deemed to be a bargaining party.
- (5) An organisation that wishes to be excused ~~from participating in the bargaining process~~ must apply in writing to the Authority for permission.
- (6) To avoid doubt, the application of the collective contract to any screen production worker who does the work of the occupational group to be specified in the coverage clause of the contract, or any engager who engages such a worker, is not affected by an organisation being excused from participating in the bargaining, even if the worker or engager is a member of the excused organisation. 35

- 42 Authority to must decide worker organisation responsible for ratification vote**
- (1) This section applies if the Authority approves an application to initiate collective bargaining under **section 40**.
- (2) The Authority must decide which worker organisation will conduct the ratification vote, if it is not satisfied that the applicant worker organisation or the worker organisation nominated by the applicant engager organisation (as the case may be) consents and has the ability to conduct the ratification vote in the manner referred to in **subsection (3)(d)(ii)**. 5
- (3) Before deciding, the Authority— 10
- (a) must have regard to any submissions received that comply with the requirements of **section 39**; and
- (b) may consider any other information or matter that, in its opinion, is relevant; and
- (c) may consider any other information from any other worker organisation or engager organisation deemed to be a bargaining party; and 15
- (d) must be satisfied that—
- (i) the organisation it is intending to confer the duty upon agrees to conduct the ratification vote; and
- (ii) the organisation has the ability to conduct the ratification vote in a manner that will allow any eligible individual who does the work of the occupational group to be specified in the coverage clause to cast a vote, irrespective of whether the person is a member of that organisation. 20
- 43 Authority must publish decisions on applications** 25
- (1) The Authority must publish all its decisions made under **section 40** on applications to initiate bargaining for an occupation-level collective contract on its Internet site (and, for successful applications, its decisions made under **sections 41 and 42**).
- (2) Decisions in relation to successful applications must include— 30
- (a) the occupational group to be specified in the coverage clause of the contract; and
- (b) the bargaining parties to the contract; and
- (c) the worker organisation that will conduct the ratification vote and the process that it will use; and 35
- (d) any occupation-level collective contract that currently applies to some or all of the screen production workers in that occupational group or the most recently expired collective contract that applied to some or all of those workers.

43A How bargaining initiated (once approval given)

- (1) Bargaining for an occupation-level collective contract must be initiated by the worker organisation or engager organisation that applied under **section 37(1)** to initiate bargaining.
- (2) The organisation must initiate bargaining— 5
- (a) by giving a bargaining notice to each bargaining party specified in the Authority’s decision to allow bargaining (published under **section 43**);
and
- (b) on or before the expiry of the 30th day from the date on which the Authority publishes that decision. 10
- (3) The bargaining notice must include the information published by the Authority under **section 43(2)**.
- (4) If the organisation fails to comply with **subsection (2)**, bargaining for the collective contract is automatically initiated on the day after the date referred to in **subsection (2)**, in accordance with the terms of the Authority’s decision published under **section 43**. 15

44 Removal of bargaining party

- (1) The Authority may remove a worker organisation or an engager organisation as a bargaining party for an occupation-level collective contract after bargaining has been initiated, but only if— 20
- (a) the organisation applies to the Authority to be removed; or
- (b) the organisation’s registration has been cancelled under **section 25**; or
- (c) the organisation was identified as a party as a result of providing false or misleading information to the Authority; or
- (d) the Authority is satisfied that the organisation no longer has any members to whom the contract would apply. 25
- (2) For the purposes of deciding whether to remove an organisation under **subsection (1)(a), section 41(3) and 41(2A) to (4)** applies with any necessary modification.
- (3) To avoid doubt, the application of the collective contract to any screen production worker who does the work of the occupational group to be specified in the coverage clause of the contract, or engager who engages such a worker, is not affected by an organisation being removed from participating in the bargaining, even if the worker or engager is a member of the removed organisation (as the case may be). 30 35

44A Addition of bargaining party

- (1) The Authority may include a worker organisation or an engager organisation as a bargaining party for an occupation-level collective contract after bargaining has been initiated, if—

- (a) the organisation applies to the Authority to be included; and
- (b) the organisation has members who do the work of the occupational group to be specified in the coverage clause or has members who engage such workers; and
- (c) the organisation was not identified during the process leading to the initiation of bargaining (for example, because the organisation was not in existence or registered at that time); and 5
- (d) the Authority is satisfied that—
- (i) allowing the organisation to be included will not undermine the bargaining taking place; and 10
- (ii) a substantial number or distinct class of screen production workers or engagers (as the case may be) would not have their interests represented were the organisation not permitted to be included in the bargaining process.
- (2) In making a decision under **subsection (1)(d)**, the Authority— 15
- (a) may consider any information or matter that, in its opinion, is relevant; and
- (b) may consider any information from any worker organisation or engager organisation that is already a bargaining party; and
- (c) may, but is not required to, notify the application, and invite and consider submissions on it, in any manner it sees fit. 20
- (3) The Authority must publish all its decisions made under this section on its Internet site.
- (4) An organisation that wishes to be included must apply in writing to the Authority for permission. 25
- 45 ~~How bargaining for occupation level collective contract initiated (once approval given)~~**
- (1) ~~Bargaining for an occupation level collective contract must be initiated by the worker organisation or engager organisation that applied under **section 37(1)** to initiate bargaining.~~ 30
- (2) ~~Bargaining must be initiated by that organisation giving a bargaining notice to each bargaining party specified in **section 43(2)(b)** on or before the expiry of the 30th day from the date on which the Authority publishes its decision under section **43** to allow the bargaining.~~
- (3) ~~The bargaining notice must include the information published by the Authority under **section 43(2)**.~~ 35
- (4) ~~If the organisation fails to comply with **subsection (2)**, bargaining for the collective contract is automatically initiated on the day after the date referred to~~

~~in **subsection (2)**, in accordance with the terms of the Authority's decision published under **section 43**.~~

46 Authority must assess draft occupation-level collective contracts for suitability for ratification

- (1) This section applies once the parties to occupation-level collective bargaining have agreed the terms they wish to put forward for ratification. 5
- (2) The party who initiated the bargaining must submit the draft contract to the Authority for assessment as to its suitability for ratification.
- (3) The Authority must approve or not approve the draft ~~contract~~ as suitable for ratification. 10
- (4) The Authority must approve the draft if satisfied that it complies with **section 31(1)(a), (2), and (3)**.
- (5) If the Authority does not approve the draft,—
 - (a) it must give the bargaining parties its reasons (by reference to the relevant matters in **subsection (4)**); and 15
 - (b) the parties may revise the draft and resubmit it for approval.
- (6) The process in **subsection (5)** may be repeated 1 or more times.
- (7) The Authority's decision under this section is final.

47 Ratification of occupation-level collective contract

- (1) This section applies if the Authority has approved under **section 46** a draft occupation-level collective contract as suitable for ratification. 20
- (2) Before any worker organisation that is a bargaining party signs the contract, it must be ratified by the screen production workers who do the work of the occupational group specified in the coverage clause of the contract.
- (3) For that purpose, the worker organisation responsible for conducting the ratification vote must give notice of the following matters: 25
 - (a) that the Authority has approved the draft contract to proceed to a ratification vote; and
 - (b) the details of the ratification process published under **section 43(2)(c)**, including— 30
 - (i) who is eligible to vote; and
 - (ii) the final date by which votes must be cast; and
 - (iii) the method by which votes may be cast.
- (4) Notice must be given on an Internet site to which the public has free access ~~and in the prescribed manner~~ in accordance with regulations made under **section 75(1)(e)** (if any). 35
- (5) For the purposes of **subsection (3)(b)(i)**, a person is **eligible to vote** if, at any time in the relevant period, the person is or has been a party to a contract with

an engager in respect of work on a screen production and the work is or was that done by the occupational group specified in the coverage clause of the contract.

- (6) For the purposes of **subsection (3)(b)(ii)**,—
- (a) the **final date by which votes must be cast** must be no earlier than 14 days from the date on which voting begins; and
 - (b) voting may begin no earlier than the date on which notice of the ratification vote is given under **subsection (3)**.
- (7) In **subsection (5)**, **relevant period** means the period starting 3 years ~~prior to~~ before the public notice of application (*see* **section 39**) and ending on the date ~~that on which~~ voting on ratification closes.
- (8) The occupation-level collective contract is ratified if a simple majority of eligible voters vote in favour of ratification.

48 Coverage of occupation-level collective contract

The terms of an occupation-level collective contract apply to— 15

- (a) every screen production worker who does the work of the occupational group specified in the coverage clause of the collective contract; and
- (b) every engager who engages a screen production worker to do that work; and
- (c) every worker organisation that is a signatory party to the collective contract; and 20
- (d) every engager organisation that is a signatory party to the collective contract.

49 Commencement of occupation-level collective contract

- (1) An occupation-level collective contract comes into force on the date that is 6 months from the date on which the notice is gazetted by the chief executive in accordance with ~~section 35(2)(a)~~ **32C(2)(a)**. 25
- (2) The terms in the collective contract apply to a screen production worker's individual contract on and from that same date, unless **subsection (3)** applies.
- (3) The terms in the collective contract apply to the worker's individual contract on and from the date that is 1 year from the date on which the chief executive gives notice of the contract if— 30
- (a) the engager and the individual entered into the individual contract before the collective contract was gazetted by the chief executive; and
 - (b) the individual contract is still in force at that later date. 35

Subpart 4—Matters applying to bargaining for enterprise-level collective contracts

- 50 Who may participate in bargaining for enterprise-level collective contract**
- (1) The bargaining parties for an enterprise-level collective contract may only be—
- (a) 1 or more worker organisations; and 5
 - (b) 1 or more engagers.
- (2) To avoid doubt, if 1 or more engagers use an engager organisation to act as their agent in the bargaining, each engager is still a party to the contract (and not the engager organisation).
- 51 How and when bargaining may be initiated** 10
- (1) A worker organisation or an engager may initiate bargaining for an enterprise-level collective contract by giving to all the other bargaining parties a bargaining notice in writing that states—
- (a) the intended coverage of the contract; and
 - (b) the time period within which the parties served with the notice may respond in writing to the notice. 15
- (2) Bargaining is initiated only if all parties that receive the bargaining notice consent in writing within the stipulated time period.
- (3) Each worker organisation must notify each of the other bargaining parties of its ratification procedure when bargaining is initiated. 20
- 51A Withdrawal of consent to bargaining prohibited**
- Bargaining parties for an enterprise-level collective contract are prohibited from withdrawing their consent once bargaining is initiated under **section 51(2)** (and the parties must conclude a collective contract in accordance with **section 27**). 25
- 52 ~~Limits on bargaining~~ Limitations on terms that may be agreed**
- The bargaining parties for an enterprise-level collective contract must not agree to any terms that, individually or in their overall effect, would be less favourable to the screen production workers to whom the contract is intended to apply than any occupation-level collective contract that also would ~~also~~ apply to those workers (once the enterprise-level collective contract came into force). 30
- 53 Ratification of enterprise-level collective contract**
- (1) Before a worker organisation that is a bargaining party to an enterprise-level collective contract signs the collective contract, it must be ratified by the organisation's members who are screen production workers and who do the work specified in the coverage clause of the contract. 35

- (2) This section does not apply if the bargaining relates to a screen production for which the engager or engagers have not yet engaged any workers to whom the contract would apply.

54 Coverage of enterprise-level collective contract

- (1) The terms of an enterprise-level collective contract apply to— 5
- (a) every worker organisation that is a signatory party to the contract; and
 - (b) every engager that is a signatory party to the contract; and
 - (c) every screen production worker—
 - (i) who is a member of a worker organisation that is a signatory party to the contract (whether at the time the organisation signs the contract or at any later date); and 10
 - (ii) who does the work specified in the coverage clause of the contract for an engager that is a signatory party to the contract.
- (2) The terms of an enterprise-level collective contract also apply to every screen production worker who does the work specified in the coverage clause of the contract but who is not a member of any signatory worker organisation (a **non-member worker**), but only if— 15
- (a) the enterprise-level collective contract provides for extension of the coverage of the collective contract to non-member workers; and
 - (b) a term is included in the contract that sets out— 20
 - (i) how the contract will apply to non-member workers who consent to being covered; and
 - (ii) how a non-member worker gives consent; and
 - (c) the non-member provides consent in accordance with that term.

54A Screen production worker may choose contract to apply 25

- (1) This section applies if—
- (a) 2 or more enterprise-level collective contracts apply to a screen production worker; and
 - (b) the worker is a member of both or all (as the case may be) of the worker organisations that are signatory parties to each collective contract. 30
- (2) The screen production worker may choose which enterprise-level collective applies to them.
- (3) To avoid doubt, the worker may change their decision under this section at any time that the section applies to their circumstances.

55 Commencement of enterprise-level collective contract 35

- (1) An enterprise-level collective contract comes into force on the date on which the bargaining parties sign the contract.

- (2) The terms in the contract apply to a screen production worker's individual contract on and from that date unless the parties to the collective contract agree to a later date, which must not be later than 6 months from the date on which the collective contract is signed.
- (3) The terms in the contract apply to a non-member worker on and from the later of— 5
- (a) the applicable date referred to in **subsection (2)**; and
 - (b) the date on which the non-member worker consents to being covered in accordance with **section 54(2)(c)**.

Part 4

10

Dispute resolution, challenges, reviews, penalties, and offences

Subpart 1—Dispute resolution, challenges, and reviews

56 ~~General matters relating to dispute resolution~~

- (1) ~~The bargaining parties to an occupation level collective contract may not confer on any person the power to fix 1 or more terms of the collective contract.~~ 15
- (2) ~~No person to whom this Act applies may confer on any other person the power to impose a penalty in relation to any matter to which this Act imposes a penalty.~~
- (3) ~~Subject to **subsections (1) and (2)**, if a dispute arises between persons to whom this Act applies, it is a matter for those persons to agree on the processes to settle the dispute, which may include agreeing to give another person decision making powers about the dispute.~~ 20
- (4) ~~However, if those persons do decide to use 1 or more of the dispute resolution processes available under this Act, the relevant provisions of this Act apply.~~

57 Mediation of disputes relating to matters under this Act

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- (1) The chief executive must employ or engage persons to provide mediation services to support the resolving of disputes in relation to any matter to which this Act applies.
- (2) If mediation is provided by the chief executive, sections 144 to 154 of the Employment Relations Act 2000 apply with any necessary modifications. 30
- (3) Nothing in this section prevents any person from seeking and using mediation services other than those provided by the chief executive.
- (4) If a dispute that arises between parties to a workplace relationship or collective bargaining cannot be resolved by mediation (whether provided by the chief executive or privately arranged), it may be resolved by a determination of the Authority made under **section 59**. 35
- (5) **Subsection (4)** is subject to **section 58**.

58 Facilitated bargaining

- (1) Before seeking a determination, the bargaining parties to a collective contract may attempt facilitation (with a member of the Authority as the facilitator) to resolve a dispute relating to the bargaining.
- (2) The Authority may accept a reference for facilitation from any party, or 2 or more parties, to bargaining if the Authority is satisfied that—
- (a) the dispute is interfering with the bargaining or the ability of the parties to conclude a collective contract; and
 - (b) the parties have made sufficient efforts at mediation to resolve their difficulties.
- (3) However, if the bargaining parties ~~have complied with their obligations under section 26 and yet~~ remain at a standstill in relation to 1 or more terms, the effect being that bargaining is prevented from being completed (and a collective contract concluded), the parties must attempt facilitation (with a member of the Authority as the facilitator) before the Authority may make a determination in relation to those terms by final offer arbitration (*see section 59(3)*).
- (4) The Authority must carry out any facilitation under this section as if it were a facilitation under the Employment Relations Act 2000, subject to the modifications to the provisions of that Act specified in the following paragraphs:
- (a) sections 50A, 50B, 50C(1) and (2), and 50J do not apply; and
 - (b) sections 50C(3), 50D to 50G, and 50I apply with any necessary modifications; and
 - (c) section 50H applies, except that the Authority must make 1 or more recommendations on the matters referred to in subsection (1)(a) and (b) of that section; and
 - (d) the Authority may refer the parties to the facilitation back to mediation if it considers that further mediation would be beneficial to resolving the dispute concerned.
- (5) If the dispute remains unresolved at the end of facilitation, the parties may apply to the Authority for a determination.

59 Determinations by Authority

- (1) A party to a workplace relationship or a party to collective bargaining may apply to the Authority for a determination on any dispute between the party and any other party to the relationship or collective bargaining.
- (2) The Authority must determine the dispute as if it were determining a dispute under the Employment Relations Act 2000, and, for that purpose,—
- (a) section 159 of that Act applies (taking into account the concept of good faith adopted under this Act); and

- (b) sections 159A to 178 of that Act apply with any necessary modifications.
- (3) Despite **subsection (2)**, the Authority must use the final offer arbitration process set out in **Schedule 4** to ~~determine the dispute~~ fix terms in a collective contract if— 5
- (a) ~~the dispute relates to bargaining for a collective contract; and~~
- (b) the bargaining falls within the circumstances described in **section 58(3)**; and
- (c) the Authority is satisfied that the parties have made sufficient efforts to resolve the dispute through mediation and facilitation. 10
- ~~(4) The process that must be used for final offer arbitration is set out in **Schedule 4**.~~
- ~~(5) However, the bargaining parties may agree to settle the dispute and conclude the collective contract in a different manner to that set out in **Schedule 4** at any point before the arbitrating body fixes the terms in dispute (provided in the case of bargaining related to an occupation level collective contract, the prohibition in **section 56(1)** is not breached).~~ 15
- (5) Despite **subsection (3)**, the bargaining parties may otherwise settle the dispute before the Authority fixes the terms, provided the manner in which they do so does not involve the fixing of the terms of an occupation-level collective contract by a third party (in breach of **section 35B(5)**). 20
- (6) All applications for a determination, including those referred to in **subsection (3)**, are to be commenced by the lodging of an application in the prescribed form (if any).
- (7) The Authority has exclusive jurisdiction to make determinations for the purposes of this section. 25
- 60 Challenges to determinations**
- (1) A party to a matter before the Authority who is dissatisfied with the Authority's determination of it may elect to have the matter heard by the court, unless **subsection (3)** applies. 30
- (2) For the purposes of a hearing authorised under **subsection (1)**, the Employment Relations Act 2000 applies subject to the modifications to the provisions of that Act specified in the following paragraphs:
- (a) sections 178A, 179, and 180 to 222F apply with any necessary modifications: 35
- (b) sections 179A to 179C do not apply.
- (3) A party to a final offer arbitration determination of the Authority may only challenge the decision by way of judicial review under section 194 of the Employment Relations Act 2000, and that section applies with any necessary modification. 40

61 Review of Authority and Registrar decisions

Section 194 of the Employment Relations Act 2000 applies, with any necessary modifications, to the exercise, refusal to exercise, or proposed or purported exercise by the Authority or the Registrar of a statutory power or statutory power of decision (as those terms are defined by section 4 of the Judicial Review Procedure Act 2016) conferred by or under this Act. 5

Subpart 2—Penalties and offences

62 Jurisdiction concerning penalties

- (1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties for a breach of any provision of this Act for which a penalty is provided under this Act. 10
- (2) An action must be brought by way of an application to the Authority for a determination.
- (3) In determining an appropriate penalty for a breach, the Authority must have regard to all relevant matters, including— 15
- (a) the purpose of this Act; and
 - (b) the nature and extent of the breach or involvement in the breach; and
 - (c) whether the breach was intentional, inadvertent, or negligent; and
 - (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and 20
 - (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and 25
 - (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of any screen production worker concerned; and
 - (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct. 30
- (4) The Authority may order that the whole or any part of any penalty recovered must be paid to any person. 35
- (5) **Subsection (1)** is subject to—
- (a) any determination made by the Authority under **section 59** to which section 177 or 178 of the Employment Relations Act 2000 applies

(which allow for the referral or removal of certain matters to the court);
and

- (b) any right to have the matter heard by the court under **section 60**.

63 Recovery of penalties

- (1) This section applies for the purposes of ~~the Authority making~~ a determination under **section 62**. 5
- (2) An action for the recovery of a penalty may be brought,—
- (a) in the case of a breach of an individual contract, by any party to the contract who is affected by the breach:
- (b) in the case of a breach during bargaining for a collective contract, by any party to the bargaining who is affected by the breach: 10
- (c) in the case of a breach of a collective contract, by any signatory party to the contract who is affected by the breach:
- (d) in any other case, by any person in relation to whom the breach is alleged to have taken place: 15
- (e) by a worker organisation or an engager organisation on behalf of any person referred to in paragraphs (a) to (d), if the person consents.
- (2A) A breach by an engager of the requirements of section 33 must be treated as a breach of a collective contract for the purposes of subsection (2)(c).
- (3) A person who is liable to a penalty under this Act is liable,— 20
- (a) in the case of an individual, to a penalty not exceeding \$10,000:
- (b) in the case of a body corporate, to a penalty not exceeding \$20,000.
- (4) A claim for 2 or more penalties against the same person may be joined in the same action.
- (5) In any claim for a penalty, the Authority may give judgment for the total amount claimed, or any amount, not exceeding the maximum specified in **subsection (3)**, or the Authority may dismiss the action. 25
- (6) The Authority may order payment of a penalty by instalments, but only if the financial position of the person paying the penalty requires it.
- (7) An action for the recovery of a penalty under this Act must be commenced within 12 months after the earlier of the following: 30
- (a) the date on which the cause of action first became known to the person bringing the action:
- (b) the date on which the cause of action should reasonably have become known to the person bringing the action. 35

- 64 Penalty for obstructing or delaying Authority investigation**
- (1) A person is liable to a penalty under this Act ~~who~~ if the person, without sufficient cause, obstructs or delays an Authority investigation, including by failing to attend as a party before an Authority investigation (if required).
- (2) The power to award a penalty under **subsection (1)** may be exercised by the Authority—
- (a) of its own motion; or
 - (b) on the application of any party to the investigation.
- 65 Offence to mislead Authority or Registrar**
- (1) A person commits an offence if the person does or says anything, or omits to do or say anything, with the intention of misleading or attempting to mislead—
- (a) the Registrar; or
 - (b) the Authority, in the ~~exercise~~ performance of its functions under **sub-part 3 of Part 3**.
- (2) A person who commits an offence under this section is liable on conviction by the court to a fine not exceeding \$5,000.

Part 5

Miscellaneous provisions and amendments to other Acts

Subpart 1—Miscellaneous provisions

Access to workplaces 20

- 66 Access to workplaces**
- (1) A representative of a worker organisation is entitled to enter a workplace for 1 or more of the following purposes:
- (a) purposes related to the work of—
 - (i) the organisation's members who are screen production workers; or 25
 - (ii) any other screen production worker to whom a collective contract that the organisation is bargaining for may apply; or
 - (iii) any other screen production worker to whom a collective contract that the organisation is a signatory party to applies:
 - (b) purposes related to the health and safety of any screen production worker at that workplace who is not a member of the worker organisation if the worker has asked for the organisation's assistance in relation to the matter: 30
 - (c) purposes related to the worker organisation's business.
- (2) Entitlement to access is subject to the representative— 35

- (a) requesting and obtaining consent to enter the workplace under **section 67(1)**; and
- (b) satisfying the requirements of **sections 68 and 69**.
- (3) A purpose is within the scope of **subsection (1)(a)** if it relates to 1 or more of the following: 5
- (a) participation in bargaining for a collective contract:
- (b) dealing with matters concerning the health and safety of the workers:
- (c) monitoring compliance with the operation of a collective contract:
- (d) monitoring compliance with this Act:
- (e) with the consent of a worker, dealing with matters relating to that worker's individual contract, proposed individual contract, terms and conditions of work, or proposed terms and conditions of work. 10
- (4) A purpose is within the scope of **subsection (1)(c)** if it relates to 1 or more of the following:
- (a) discussing the organisation's business with its members: 15
- (b) seeking to recruit screen production workers as members of the organisation:
- (c) providing information about the organisation and its membership to any screen production worker at the workplace.
- (5) A discussion in a workplace between a screen production worker and a representative under this section must not exceed a reasonable duration. 20
- (6) An engager must not deduct any amount payable to a worker by the engager in respect of the time during which the worker ~~is taking~~ takes part in a discussion referred to in **subsection (5)**.
- 67 Representative of worker organisation must obtain consent to enter workplace** 25
- (1) Before entering a workplace, a representative of a worker organisation entitled to enter in accordance with **section 66** must request and obtain the consent of the person in control of the workplace.
- (2) The person in control may refuse consent only if— 30
- (a) the person reasonably believes the representative does not satisfy the criteria for access under **section 66(1)**; or
- ~~(b) the entry would unreasonably impede screen production activities to the extent that the entry would prevent production or require it to be temporarily discontinued (for example, if sensitive material is being produced and access to the workplace might require the shooting of a particular scene to be stopped in order to protect the material).~~ 35
- (b) the entry would unreasonably impede screen production activities to the extent that—

- (i) the entry would prevent production or require it to be temporarily discontinued (for example, if sensitive material is being produced and access to the workplace might require the shooting of a particular scene to be stopped in order to protect the material); and
- (ii) the impediment could not be overcome by imposing on the representative conditions or further conditions (as the case may be) under **section 68(2)**. 5
- (3) The person in control must advise the representative, in writing, of the person's decision, including any reasonable conditions imposed on the entry in accordance with **section 68(2)**, as soon as is reasonably practicable, but no later than the day after the date on which the request is received (and must give reasons ~~in writing~~ if the person refuses consent). 10
- (4) The person in control may revoke consent to enter the workplace if—
- (a) there is a change in circumstances and entry to the workplace or any part of the workplace might unreasonably impede screen production activities in the manner described in **subsection (2)(b)**; or 15
- (b) the representative is no longer entitled to enter the workplace because the purpose entitling the representative to access under **section 66(1)** no longer applies; or
- (c) the representative does not comply with any reasonable conditions imposed on the entry under **section 68(2)**. 20
- (5) If consent is revoked, the person in control must give the representative written reasons for the revocation no later than the day after the date on which consent is revoked.
- 68 Conditions relating to access** 25
- (1) A representative of a worker organisation entitled to enter a workplace may do so if the representative believes, on reasonable grounds,—
- (a) that a screen production worker referred to in **section 66(1)(a) or (b)** is working or normally works at the workplace; or
- (b) that the entry is related to the organisation's business. 30
- (2) A representative must comply with any reasonable condition of entry that the person in control of the workplace may impose in relation to 1 or more of the following purposes:
- (a) minimising disruption to screen production activity;
- (b) protecting commercially sensitive or confidential information: 35
- (c) managing risks to the health and safety of any person at the workplace;
- (d) maintaining security.

69 Additional requirements relating to access

- (1) A representative of a worker organisation entitled to enter a workplace must, at the time of the initial entry and, if requested by the person in control of the workplace, at any time after entering the workplace,—
- (a) state the purpose of the entry (in terms of **section 66(1)**); and 5
 - (b) produce evidence of consent to entry; and
 - (c) produce evidence of the representative's identity and authority to represent the worker organisation concerned.
- (2) A representative who fails to produce any information required under **subsection (1)** may be refused access. 10
- (3) If a representative with consent to enter a workplace is unable, despite reasonable efforts, to find, at the time of entering the workplace, the person in control, the representative must leave in a prominent place at the workplace a written statement of—
- (a) the representative's identity; and 15
 - (b) the worker organisation represented; and
 - (c) the date and time of entry; and
 - (d) the purpose or purposes of entry (in terms of **section 66**).

70 Penalty for certain acts in relation to entering workplace

- (1) A person in control of a workplace is liable to a penalty under this Act if the person,— 20
- (a) without lawful excuse under **section 67(2)**, refuses consent for ~~access~~ entry to a workplace by a representative of a worker organisation; or
 - (b) without lawful excuse under **section 67(4)**, revokes consent for ~~access~~ entry to a workplace by a representative of a worker organisation; or 25
 - (c) imposes conditions on ~~access~~ entry to a workplace other than in accordance with **section 68(2)**; or
 - (d) without lawful excuse, otherwise obstructs a representative of a worker organisation entitled to enter a workplace from entering the workplace or doing anything reasonably necessary for or incidental to the purpose for entering. 30
- (2) A representative of a worker organisation is liable to a penalty under this Act if the representative—
- (a) wilfully enters a workplace in breach of **section 68(1)**; or
 - (b) having lawfully entered a workplace under **section 68(1)**, wilfully fails to comply with any reasonable condition of entry imposed under **section 68(2)**; or 35
 - (c) wilfully fails to comply with **section 69(1) or (3)**.

*Registrar of Screen Industry Organisations***71 Registrar of Screen Industry Organisations**

- (1) The chief executive—
- (a) must appoint a Registrar of Screen Industry Organisations; and
 - (b) may appoint a Deputy Registrar of Screen Industry Organisations. 5
- (2) The Registrar and Deputy Registrar may be employees of the department and may hold any other office or position in the department.
- (3) Subject to the control and direction of the Registrar, the Deputy Registrar has, and may exercise or perform, all the powers, duties, and functions of the Registrar. 10

72 Registrar may seek directions of Authority

- (1) The Registrar may apply to the Authority for directions relating to the exercise or performance of the Registrar's powers, duties, and functions under this Act.
- (2) An application must be served on all persons who, in the Registrar's opinion, are interested in the application. 15

~~*Secondary legislation*~~ *Matters relating to occupational groups***73 Occupational groups**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend **Schedule 3**.
- (2) An order may insert in or delete from **Schedule 3** categories of screen production workers as occupational groups for the purposes of identifying those screen production workers to whom occupation-level collective contracts may apply. 20
- (3) If an order has the effect of deleting an occupational group that comprises screen workers to whom an existing occupation-level collective contract applies, the order must provide that it comes into force on a date that is after the date on which the existing contract expires. 25
- (4) Before recommending the making of an order, the Minister must consult (or be satisfied that the chief executive has consulted on the Minister's behalf) persons that appear to the Minister or the chief executive likely to have an interest in the order. 30
- (5) In this section, **Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.

74 Further matters relating to change in occupational groups 35

- (1) This section applies if an Order in Council made under **section 73** creates a new occupational group in **Schedule 3**.

- (2) Bargaining for and ratification of an occupation-level collective contract in relation to the new occupational group may be carried out (in accordance with **subpart 3 of Part 3**) at any time after the order comes into force.
- (3) **Subsection (4)** applies to a screen production worker who is covered by an occupation-level collective contract (the **current contract**) but who, once any collective contract referred to in **subsection (2)** comes into force, will be covered by that contract (the **new collective contract**). 5
- (4) The new collective contract is deemed to apply to the worker from the date on which ~~the new collective contract~~ it comes into force, irrespective of whether—
- (a) the current contract is still in force; and 10
- (b) the terms of the new collective contract are less favourable to the worker than those of the current contract.

Regulations

75 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for 1 or 15 more of the following purposes:
- (a) prescribing ~~the manner in which~~ how applications under **sections 21(2) and 37(2)** must be made:
- (b) prescribing the form of a certificate of registration for the purposes of **section 23(1)**: 20
- (c) prescribing documentation or information for the purposes of **sections 21(2)(d), 24(b), and 37(2)(e)**:
- (d) prescribing, for the purposes of **section 39**,—
- (i) the form in which submissions must be given; and
- (ii) the minimum requirements as to the content of submissions 25 (which may be different requirements for different categories of ~~person~~ persons); ~~and~~:
- (e) prescribing how notice must be given under **section 47(4)**; ~~and~~:
- (f) prescribing the form for applications for a determination under **section 59(6)**; ~~and~~: 30
- (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made for the purposes of **subsection (1)(d)(ii)** may only require information that is necessary for the Authority to make a decision under **section 40**. 35

Subpart 2—Amendments to Employment Relations Act 2000

76 Amendments to Employment Relations Act 2000

This subpart amends the Employment Relations Act 2000.

77 Section 6 amended (Meaning of employee)

- (1) Repeal section 6(1)(d) and (1A). 5
- (2) After section 6(4), insert:
- (4A) Nothing in this section applies to determine the employment status of a person who falls within the meaning of screen production worker in **section 11 of the Screen Industry Workers Act 2020**. 10
- (3) Repeal section 6(7). 10

78 Section 161 amended (Jurisdiction)

After section 161(3), insert:

- (4) The Authority has jurisdiction to perform and exercise the functions and powers conferred on it by the **Screen Industry Workers Act 2020**.

79 Section 187 amended (Jurisdiction of court)

In section 187(1)(m), after “any other Act”, insert “including the Screen Industry Workers Act 2020”.

15

Schedule 1

Transitional, savings, and related provisions

s 9

Part 1

Provision relating to this Act as enacted

5

1 Contracts entered into before commencement of Act

- (1) This clause applies to a contract entered into between ~~persons who are~~ a screen production worker and an engager (as those terms are defined in this Act) before the commencement of this Act (the **pre-commencement contract**).
- (2) The terms and conditions of the pre-commencement contract apply for ~~the period that is~~ 12 months ~~from~~ after the commencement of this Act, as if this Act had not been enacted. 10
- (3) At the end of the 12-month period,—
- (a) the contract must be treated ~~on and from that date~~ as if it were an individual contract within the meaning of **section 10** of this Act; and 15
- (b) the terms and conditions of the contract must be varied (if necessary) to comply with the requirements of this Act no later than the day on which the 12-month period ends.
- (4) ~~Subclauses (2) and (3) apply to a pre-commencement contract unless the contract satisfies the following criteria (in which case **subclause (5)** applies):~~ 20
- (a) ~~the screen production worker is a writer as described in **Schedule 3** of this Act; and~~
- (b) ~~the contract was entered into more than 5 years before the commencement of this Act; and~~
- (c) ~~the contract includes terms or conditions concerning intellectual property rights between the writer and the engager in relation to a screen production.~~ 25
- (4) However, if the pre-commencement contract satisfies the following criteria, the requirement in **section 16A(1)** of this Act (to include the mandatory terms in **section 17**) does not apply to the contract: 30
- (a) the screen production worker is a writer as described in **Schedule 3** of this Act; and
- (b) the contract was entered into more than 5 years before the commencement of this Act; and
- (c) the contract includes terms or conditions concerning intellectual property rights between the writer and the engager in relation to a screen production. 35

- (5) ~~Subclauses (2) and (3) apply to the contract except that the requirement in section 16(3) of this Act never applies to the contract.~~
- (6) The rest of this Act applies to all pre-commencement contracts from the date on which the Act comes into force (for example, the parties may use the dispute resolution provisions of the Act to resolve any issues that arise).

5

Schedule 2

Screen productions to which Act applies

s 12

- 1 Screen productions to which Act applies**
- (1) This Act applies to the following screen productions: 5
- (a) computer-generated games:
 - (b) films:
 - (c) programmes.
- (2) Despite **subclause (1)**, this Act does not apply to any screen production of a kind described in **clause 2**. 10
- 2 Screen productions to which Act does not apply**
- This Act does not apply to the following screen productions:
- (a) advertising programmes that are longer than 5 minutes in duration:
 - (b) amateur productions:
 - ~~(c) computer-generated games for educational, training, and advertising purposes:~~ 15
 - (d) game show programmes:
 - (e) live event programmes:
 - (f) music and dance programmes:
 - (g) news and current affairs programmes: 20
 - (h) recreation and leisure programmes:
 - (i) religious programmes:
 - (j) sports programmes:
 - (k) talk show programmes:
 - (l) training and instructional programmes: 25
 - (m) variety show programmes.
- 3 Interpretation**
- In this Act, unless the context otherwise requires,—
- advertising programme** has the meaning set out in section 2(1) of the Broadcasting Act 1989 30
- amateur production**—
- (a) means a screen production—
 - (i) in which screen production workers take part for their own enjoyment; and

- (ii) that is conducted for the recreation or entertainment of the general public or a select group of people; and
- (iii) from which the workers do not derive an income; and
- (b) includes productions that meet the requirements of **paragraph (a) and that are** made in the course of education and training 5
- computer-generated game** means a screen production that is a game generated by a computer, where the way in which the game proceeds depends on the decisions, inputs, and direct involvement of the player
- film** means a screen production that is a motion picture (for example, a feature film or a documentary film) 10
- game show programme—**
- (a) means a programme that features a game of skill or chance or a quiz that offers winning participants a prize; but
- (b) does not include a programme that is a reality show in which the overarching narrative or story is a game in which participants compete against each other over more than 1 episode to win a title or prize 15
- live event programme—**
- (a) means a programme in which more than 50% of the content comprises 1 or more live events; and
- (b) includes a recording of live theatre or ~~award shows~~ an award show; but 20
- (c) does not include a programme that is recorded in front of a live audience, if the presence of the live audience is incidental to the recording of the programme
- music and dance programme—**
- (a) means a programme in which more than 50% of the content comprises 1 or more live or prerecorded performances of music or dance (for example, recordings of opera, operetta, ballet, and musicals); but 25
- (b) does not include a music or dance programme that is a reality show in which participants compete against each other over more than 1 episode to win a title or prize 30
- news and current affairs programme—**
- (a) means a programme that reports on or analyses local, national, or international events; and
- (b) includes discussion and panel programmes in relation to such events
- programme—** 35
- (a) means a screen production, other than a film or a computer-generated game, that is a programme as defined in section 2(1) of the Broadcasting Act 1989; and
- (b) to avoid doubt, includes—

- (i) a programme that consists of a single episode or a season or series of episodes:
- (ii) an advertising programme:
- (iii) an election programme as defined in section 69(1) of the Broadcasting Act 1989

5

recreation and leisure programme means a programme that presents information on—

- (a) recreation, ~~hobby~~ hobbies, or skill development:
- (b) recreational sports and outdoor activities:
- (c) travel and leisure:
- (d) employment opportunities

10

religious programme means a programme in which more than 50% of the content comprises religious teachings

~~**sports programme** means a programme that comprises—~~

- ~~(a) a live or pre-recorded sports event or competition:~~
- ~~(b) review and analysis of 1 or more sports events or teams (for example, a sporting news and panel show)~~

15

sports programme means—

- (a) a programme that comprises—
 - (i) a live or pre-recorded sports event or competition:
 - (ii) review and analysis of 1 or more sports events or teams (for example, a sporting news and panel show); and
- (b) an e-sports programme

20

talk show programme—

- (a) means a programme in which more than 50% of the content comprises a host or hosts discussing a topic or a variety of topics; and
- (b) includes such a programme that features—
 - (i) a guest or guests who appear with the host or hosts:
 - (ii) musical performances, games, or cooking segments

25

training and instructional programme means a programme that is intended to be viewed primarily for the purpose of the viewer acquiring or developing a skill or knowledge

30

variety show programme means a programme—

- (a) in which more than 50% of the content is of a mixed character (for example, not exclusively musical or comedic performances); and

35

- (b) that comprises a number of individual acts (for example, singing, dancing, acrobatic exhibitions, comedy sketches, monologues, or magical tricks).

Schedule 3

Occupational groups

ss 10, 73

Occupational group	Description
Composer	individuals <u>Individuals</u> who create or modify musical compositions for screen productions
Director	individuals <u>Individuals</u> who direct the making of screen productions by visualising scripts while guiding performers and technicians to capture a screen production's vision
Game developer	individuals who create and manipulate computer animation, audio, video, and graphic image files into multimedia programmes to produce data and content for games
<u>Game developer</u>	<u>Individuals who work on, or contribute to, computer-generated games and who do not fall within the description of the composer, director, performer, or writer occupational groups in this schedule</u>
Performer	individuals <u>Individuals</u> who portray roles in screen productions, including stunt persons, narrators, voice-over actors, extras, singers, musicians, and dancers
Technician (post-production)	individuals <u>Individuals</u> who work on, or contribute to, screen productions during the post-production phase, and who do not fall within the description of any other occupational group in this schedule
Technician (production)	individuals <u>Individuals</u> who work on, or contribute to, screen productions before the post-production phase, and who do not fall within the description of any other occupational group in this schedule
Writer	individuals <u>Individuals</u> who write, edit, contribute to, and evaluate scripts and stories for screen productions

Schedule 4

Final offer arbitration for fixing terms of collective contract

s 59(4)(3)

- 1 Parties** 5
- The parties to an arbitration must consist of—
- (a) 1 worker organisation or more than 1 worker organisation acting jointly (the **worker party**); and
 - (b) 1 engager or 1 engager organisation, or more than 1 engager organisation acting jointly (the **engager party**).
- 2 Arbitrating body** 10
- (1) The arbitrating body is a panel of the Authority appointed from time to time under this clause.
 - (2) The arbitrating body must consist of 1 member of the Authority appointed by the Chief of the Authority.
 - (3) However, the arbitrating body must include additional members, if nominated in accordance with the following rules: 15
 - (a) 1 or 2 members to be nominated by the worker party:
 - (b) 1 or 2 members to be nominated by the engager party:
 - (c) the number of members nominated under **paragraph (a)** must be the same as the number nominated under **paragraph (b)**. 20
 - (4) The arbitrating body must be chaired by the individual appointed under **subclause (2)**.
 - (5) An individual appointed under **subclause (3)** who is not a member of the Authority has and enjoys, in the performance of the person's duties under this Act, the same protection as a member of the Authority under section 176 of the Employment Relations Act 2000. 25
- 3 Statement as to state of negotiations**
- The worker party and the engager party must each provide the arbitrating body with a signed statement as to—
- (a) the issues in dispute; and 30
 - (b) the position on those issues of the party providing the statement; and
 - (c) full particulars of the final offer being made by the party providing the statement.
- 4 Copies of statement**
- When the arbitrating body has received both of the statements required under **clause 3**, it must supply— 35

- (a) a copy of the engager party's statement to the worker party; and
- (b) a copy of the worker party's statement to the engager party.

5 Hearing and determination of dispute

- (1) The arbitrating body, after giving the parties an opportunity to be heard, must, in accordance with the provisions of this schedule, hear and determine the dispute and fix the terms of the collective contract. 5
- (2) The arbitrating body must, at the conclusion of the hearing and before making its determination, give each of the parties the opportunity to restate in writing, within a specified time or before a specified date, its final offer.
- (3) If a party restates its final offer, the offer as restated is that party's final offer for the purposes of **clause 8**. 10

6 Mandatory criteria for arbitrating body

The arbitrating body, in hearing and determining a dispute in relation to a proposed collective contract, must have regard to—

- (a) screen industry practices and norms, including the evolution and development of screen industry practices and norms; and 15
- (b) the impact of the terms offered on current and potential screen production activity during the term of the contract; and
- (c) the impact of the terms offered on current and potential screen production workers during the proposed term of the contract; and 20
- (d) the terms that the parties have agreed; and
- (e) relativities within the proposed contract, and between the proposed contract and other collective contracts; and
- (f) the nature of working relationships covered by this Act; and
- (g) any relevant information provided by parties. 25

7 Application of criteria

In applying the criteria, the arbitrating body is not bound by historical precedent and practice of any sort.

8 Duty of arbitrating body to accept ~~one~~1 final offer

- (1) In fixing the terms of the collective contract, the arbitrating body must accept in full either the final offer presented by the worker party or the final offer presented by the engager party. 30
- (2) The decision of the arbitrating body must be decided by majority vote if the body comprises 3 or more members.
- (3) One of the voters in the majority must be the ~~chair~~ chairperson. 35

9 Power of arbitrating body to waive technical irregularities

The arbitrating body, in its discretion, may waive any technical irregularity or omission that may have occurred in the submission or reference of a dispute to the arbitrating body, if it is satisfied that the provisions of this Act, including this schedule, have been substantially complied with.

5

10 Process matters

Sections 159A to 178 of the Employment Relations Act 2000 apply, with any necessary modifications, for the purposes of conducting an arbitration under this schedule.

Legislative history

18 February 2020
5 March 2020

Introduction (Bill 219–1)
First reading and referral to Education and Workforce
Committee